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

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1194]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Little Rock check processing office of the Federal Reserve Bank of St. Louis and reassign the Federal Reserve routing symbols currently listed under that office to the St. Louis Reserve Bank's Memphis office and delete the reference to the Milwaukee check processing office of the Federal Reserve Bank of Chicago and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Chicago. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

DATES: The amendment to Appendix A under the Eighth Federal Reserve District (Federal Reserve Bank of St. Louis) is effective on July 24, 2004. The amendment to Appendix A under the Seventh Federal Reserve District (Federal Reserve Bank of Chicago) is effective on August 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check.'' A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for ''local'' checks are considered ''nonlocal.''

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.[2] As part of this restructuring process, the Little Rock office of the Federal Reserve Bank of St. Louis will cease processing checks on July 24, 2004, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the Federal Reserve Bank of St. Louis's Memphis office. The Milwaukee office of the Federal Reserve Bank of Chicago will cease processing checks on August 7, 2004, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the head office of the Federal Reserve Bank of Chicago. As a result of these changes, some checks that are drawn on and deposited at banks located in the affected check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

To assist banks in identifying local and nonlocal banks, the Board accordingly is amending the lists of routing symbols associated with the Federal Reserve Banks of St. Louis and Chicago to reflect the transfer of operations (1) from the St. Louis Reserve Bank's Little Rock office to that Reserve Bank's Memphis office and (2) from the Chicago Reserve Bank's Milwaukee office to that Reserve Bank's head office. To coincide with the effective date of the underlying check processing changes, the amendments affecting the Federal Reserve Bank of St. Louis are effective July 24, 2004, and the amendments affecting the Federal Reserve Bank of Chicago are effective August 7, 2004. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[3] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the May 2003 **Federal Register** document.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendix

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] *See* 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *www.frbservices.org.*

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the § 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will (1) delete the reference to the Little Rock office of the Federal Reserve Bank of St. Louis and reassign the routing symbols listed under that office to the St. Louis Reserve Bank's Memphis office and (2) delete the reference to the Milwaukee office of the Federal Reserve Bank of Chicago and reassign the routing symbols listed under that office to the Chicago Reserve Bank's head office. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The Seventh and Eighth Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Seventh Federal Reserve District

[Federal Reserve Bank of Chicago]

Head Office

0710	2710
0711	2711
0712	2712
0719	2719
0750	2750
0759	2759

Detroit Branch

0720	2720
0724	2724

Des Moines Office

0730	2730
0739	2739
1040	3040
1041	3041
1049	3049

Indianapolis Office

0740	2740
0749	2749

Eighth Federal Reserve District

[Federal Reserve Bank of St. Louis]

Head Office

0810	2810
0812	2812
0815	2815
0819	2819
0865	2865

Louisville Branch

0813	2813
0830	2830
0839	2839
0863	2863

Memphis Branch

0820	2820
0829	2829
0840	2840
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* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 13, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–11269 Filed 5–18–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Phibro Animal Health, Inc. The supplemental NADAs provide for a 0-day preslaughter withdrawal time for use of oxytetracycline in cattle feed.

DATES: This rule is effective May 19, 2004.

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

SUPPLEMENTARY INFORMATION: Phibro Animal Health, 710 Rt. 46 East, suite 401, Fairfield, NJ 07004, filed supplements to NADA 8–804 for TM–50, TM–50D, TM–100, and TM–100D (oxytetracycline) Type A medicated articles and NADA 95–143 for TERRAMYCIN 50, TERRAMYCIN 100, and TERRAMYCIN 200 (oxytetracycline) Type A medicated articles used for making medicated feeds for the treatment of various bacterial diseases of livestock. The supplemental NADAs provide for a 0-day withdrawal time prior to slaughter when Type C medicated feeds containing oxytetracycline are fed continuously to calves, beef cattle, and nonlactating dairy cattle at a dosage of 10 milligrams per pound of body weight for up to 14 days. The supplemental NADAs are approved as of March 12, 2004, and the regulations are amended in 21 CFR 558.450 to reflect the approval. The basis of approval is discussed in the freedom of information summaries.

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

The agency has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

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

§ 558.450 [Amended]

■ 2. Section 558.450 *Oxytetracycline* is amended in the table in paragraph (d)(1)(ix) in entries 1 and 2 in the ''Limitations'' column by removing ''withdraw 5 d before slaughter'' and by adding in its place ''for No. 053389, withdraw 5 d before slaughter; for No. 066104, 0-day withdrawal''.

Dated: April 14, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–11026 Filed 5–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE50

Distribution of Fiscal Year 2004 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a rule requiring that we immediately distribute $90 million of fiscal year 2004 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. This partial distribution reflects the funds the Federal Highway Administration has allocated to the Department of the Interior and is based on funding appropriated by the Surface Transportation Extension Act of 2003 in effect until April 30, 2004. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting States. This distribution will allow an immediate allocation of funds based on an existing formula, final allocations will be dependent on a final authorization of highway trust funds and a fiscal year 2004 appropriations.

DATES: *Effective Date:* May 19, 2004. Section 170.4b expires September 30, 2004.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–20–SIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 513–7714 (phone) or (202) 208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Rule?

We are publishing this rule to distribute $90 million of fiscal year 2004 IRR Program funds. This rule sets no precedent for the final rule to be published as required by section 1115 of TEA–21.

Why Does This Final Rule Not Allow for Notice and Comment on the Partial Distribution of Fiscal Year 2004 IRR Program Funds, and Why Is It Effective Immediately?

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on this distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this final rule for distribution of the available fiscal year 2004 IRR Program funds effective immediately under 5 U.S.C. 553(d)(3).

Notice and public procedure would be impracticable because of the urgent need to distribute the available fiscal year 2004 IRR Program funds. Approximately 1,300 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 220 deficient bridges and the construction of approximately 7,300 miles of roads. Fiscal year 2004 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate final distribution of fiscal year 2004 IRR Program funds, tribal and BIA IRR projects will be forced to cease activity, placing projects and jobs in jeopardy. Waiting for notice and comment on this final distribution of fiscal year 2004 IRR Program funds would be contrary to the public interest. In some of the BIA regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Approximately 40 percent of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects and deficient bridges and roads jeopardize the health and safety of the traveling public. Further, over 600 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This rule is going into effect immediately because of the urgent need for distributing the final funds available under the fiscal year 2004 IRR Program to continue these construction projects.

Where Can I Find Information on the Distribution of Fiscal Year 2003 IRR Program Funds?

You can find this information in the **Federal Register** notice dated June 5, 2003 (68 FR 33625).

How Will the Secretary Distribute $90 Million of Fiscal Year 2004 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute only $90 million of fiscal year 2004 IRR program funds based on the current relative need formula used in fiscal years 2000, 2001, 2002 and in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting States in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not a significant regulatory action because it will not have an annual effect of more than $100

million on the economy. The total amount currently available for distribution of fiscal year 2004 IRR program funds is approximately $135 million and we are distributing only $90 million under this rule. Congress has authorized these funds and FHWA has already allocated them to the Bureau of Indian Affairs (BIA). The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2004 IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the partial distributions for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds. Approximately 350 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not State and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing only $90 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to projects for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $90 million or greater in any year. The effect of this rule is to provide $90 million of fiscal year 2004 IRR Program funds for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal Government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. Under the Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula which is currently being finalized. A final funding formula for fiscal year 2004 will be published in 2004. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to $90 million of fiscal year 2004 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the

National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' we have consulted with tribal representatives throughout the negotiated rulemaking process. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds (see **Federal Register** notices at 65 FR 37697, 66 FR 17073, 67 FR 44355 and 68 FR 33625)) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process.

List of Subjects in 25 CFR Part 170

Highways and roads, Indians—lands.

■ In order to distribute part of fiscal year 2004 IRR Program funds immediately we are amending part 170 in chapter I of title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

■ 2. Revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute $90 million of fiscal year 2004 Indian Reservation Roads Program funds?

On May 19, 2004, we will distribute $90 million of fiscal year 2004 IRR Program funds authorized under the Surface Transportation Extension Act of 2003, Public Law 108–88, 117 Stat. 1110. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting States by inserting the latest data reported for those states for use in the relative need formula process.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–11280 Filed 5–18–04; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–060]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the U.S. Naval Academy Crew Races, marine events to be held April 17, April 24, and May 21, 2004, on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

DATES: 33 CFR 100.518 will be enforced from 5:30 a.m. to 10 a.m. on April 17, 2004, from 5:30 a.m. to 9 a.m. on April 24, 2004 and from 5 a.m. to 8 a.m. on May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor crew races on the waters of the Severn River at Annapolis, Maryland. The events will consist of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the Severn River. A fleet of spectator vessels is expected to gather near the event site to view the competition. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of each event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: April 2, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–11235 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–156]

RIN 1625–AA08

Special Local Regulations for Marine Events; Nanticoke River, Sharptown, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for an outboard racing regatta held annually on the waters of the Nanticoke River near Sharptown, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in portions of the Nanticoke River during the event.

DATES: This rule is effective June 18, 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 CGD05–03–156 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 24, 2003 we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Nanticoke River, Sharptown, MD'' in the **Federal Register** (68 FR 60895). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The North-South Racing Association sponsors an outboard racing regatta annually on the last Saturday and Sunday in June. The event consists of approximately 50 hydroplanes and runabouts conducting high-speed competitive races on the waters of the Nanticoke River between the Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175). The races usually begin at 12 noon and conclude at 5 p.m. each day. A fleet of spectator vessels normally gathers nearby to view the event. To provide for the safety of participants, spectators and transiting vessels, the Coast Guard intends to temporarily restrict vessel movement in the event area before, during and after the event.

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. Although this regulation will prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, vessel traffic will be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

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 will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Nanticoke River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only two days each year. Vessel traffic will be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. We received no requests for assistance, and none was provided.

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 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h). The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.532 to read as follows:

§ 100.532 Nanticoke River, Sharptown, MD.

(a) *Definitions:*

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Regulated Area includes all waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W, to latitude 38°32′42″ N, longitude 75°43′09″ W, thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W, thence northwesterly to latitude 38°33′09″ N, longitude 75°42′44″ W, thence southwesterly to latitude 38°32′46″ N, longitude 75°43′14″ W. All coordinates reference Datum NAD 1983.

(b) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol; and

(ii) Proceed as directed by any Official Patrol.

(c) *Enforcement period.* This section will be enforced annually on the last Saturday and Sunday in June. Notice of the specific enforcement periods will be given via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: April 15, 2004.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–11233 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–98–043]

RIN 1615–AA00 (Formerly 2115–AA97)

Safety Zone: Atlantic Ocean, Vicinity of Cape Henlopen State Park, DE

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In 1999, the Coast Guard established a safety zone in the Atlantic Ocean near Cape Henlopen State Park, Delaware. The zone was created to protect spectators and vessels from the potential hazards associated with the Delaware Aerospace Education Foundation launch of a Super Loki Meteorological Rocket from Cape Henlopen State Park on the second Saturday of May each year. Vessels may not enter the safety zone without permission of the Captain of the Port, Philadelphia. Because of a clerical error, this final rule was only referenced in the **Federal Register** in 1999 and not published in full text.

DATES: This final rule became effective on May 7, 1999. The rule has been enforced using actual notice since May 7, 1999, and is enforceable using constructive notice as of May 19, 2004.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Commanding Officer, USCG MSO/Group Office, 1 Washington Avenue, Philadelphia, PA 19147–4395, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (215) 271–4888.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Waterways Management Branch, USCG MSO/Group Office, 1 Washington Avenue, Philadelphia, PA 19147–4395, telephone (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 8, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Atlantic Ocean, Vicinity of Cape Henlopen State Park, DE'' in the **Federal Register** (64 FR 6006). The Coast Guard did not receive any comments on this proposed rulemaking. No public hearing was requested, and none was held.

Finding good cause under 5 U.S.C. 553(d)(3), the Coast Guard issued a final rule April 30, 1999, and made it effective less than 30 days after publication in the **Federal Register**. We noted that the next launch of the Super Loki Meteorological Rocket from Cape Henlopen State Park was scheduled for May 8, 1999, and that rather than publish a temporary final rule for 1999 and a final rule for all years thereafter, we made the final rule effective on May 7, 1999 because it was the most efficient solution. Delaying the effective date would have been contrary to the public interest as immediate action is necessary to restrict vessel traffic in the area, and protect mariners from the potential hazards associated with the launch.

The final rule was received at Coast Guard Headquarters on May 7, 1999, but was mistakenly designated for inclusion in a quarterly list of temporary final rules that expired before they could be published in full text in the **Federal Register**. Therefore, this final rule was referenced in a notice of temporary rules entitled ''Safety Zones, Security Zones, and Special Local Regulations.'' (64 FR 72929, December 29, 1999). The final rule's docket number entry, however, was listed as ''05–99–043'' instead of ''05–98–043'' (64 FR 72931). The final rule was scanned as item 78 into our

docket, USCG–1999–5938, for notice of temporary rule published December 29, 1999 (to visit that docket on the Internet, go to *http://dms.dot.gov/search/searchFormSimple.cfm* and type in ''5938''). This final rule was signed on April 30, 1999, by Roger T. Rufe, Jr., then Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

Background and Purpose

The Delaware Aerospace Education Foundation will launch a Super Loki Meteorological Rocket from Cape Henlopen State Park each year on the second Saturday in May, for the purpose of collecting meteorological data. If the Saturday launch is cancelled because of inclement weather, it is rescheduled for the next day. This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

Although the exact launch time is subject to change because of weather, the entire process from launch to splashdown should occur between 2 p.m. and 4:30 p.m. on the launch date. The Coast Guard will announce by broadcast Notice to Mariners the anticipated day (either Saturday or Sunday) and the time of launch. The Coast Guard will grant general permission to enter the safety zone during those times in which the launch and spent rocket motor do not pose a hazard to mariners. Because the hazardous condition should last for only 2½ hours of one day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal.

This safety zone covers an 8-square-nautical-mile section of the Atlantic Ocean adjacent to the launch site at Cape Henlopen State Park in Delaware. Specifically, the waters of the Atlantic Ocean within the area bounded by a line drawn north from the tip of Cape Henlopen, located at latitude 38°48.2′ N, longitude 75°05.5′ W, to a point located at latitude 38°49.4′ N, longitude 75°05.5′ W; then east to a point located at latitude 38°49.4′ N, longitude 75°01.4′ W; then south to a point located at latitude 38°43.0′ N, longitude 75°01.4′ W; then west to a point on the shoreline located at latitude 38°43.0′ N, longitude 75°04.5′ W, then north following the shoreline, to a point located at latitude 38°48.2′ N, longitude 75°05.5′ W.

The safety zone will be enforced on the second Saturday in May or the following day. Vessels will be prohibited from transiting through the safety zone without first obtaining permission from the Captain of the Port, Philadelphia. The Captain of the Port will announce by Broadcast Notice to Mariners the anticipated day and time of the launch and grant general permission to enter the safety zone during all non-hazardous times.

The rocket payload, assisted by parachute, should splash down in the Atlantic Ocean about 22 nautical miles southeast of the launch point, which is an area outside of the proposed safety zone. The Coast Guard advises all marine traffic to exercise caution when transiting that area during launch times.

Discussion of Comments and Changes

The Coast Guard received no comments on the 1999 proposed rule (64 FR 6006, February 8, 1999). The May 1999 final rule expanded the description of the safety zone to include the final leg along the shoreline adjacent to Cape Henlopen State Park. Otherwise, the May 1999 final rule implemented the NPRM without change.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The area of the safety zone is limited to 8 square nautical miles. The hazardous condition should last for only 2½ hours of one day. General permission to enter the safety zone will be given during non-hazardous times. Therefore, Coast Guard expects 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.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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 area of the safety zone is limited to 8-square nautical miles. The hazardous conditions should last for only 2½ hours of one day. General permission to enter the safety zone will be given during non-hazardous times. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no Collection-of-Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(g) of COMDTINST M16475.1 C, this rule is categorically excluded from further environmental documentation. Regulations establishing safety zones are excluded under that authority. Nevertheless, a Categorical Exclusion Determination statement was prepared and placed in the rulemaking docket. It is available for inspection or copying at the location indicated under **ADDRESSES.**

In the course of developing the Categorical Exclusion Determination, the U.S. Fish and Wildlife Service provided comments to the Coast Guard in accordance with Section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). One Federally listed threatened species, the piping plover (Charadrius melodus), nests at Cape Henlopen State Park. In Delaware, their breeding season is March 15 through September 1; thus, the rocket launch is in the midst of their breeding season.

The comments recommended that the rocket not launch within ¼ mile of the plover's breeding grounds. We forwarded the comments to the Delaware Aerospace Education Foundation and the Delaware Division of Parks and Recreation. The latter organization authorizes the rocket launch by issuance of a special-use permit. Our final rule does not determine the site of the rocket; it merely establishes a safety zone to protect spectators and transiting vessels from the hazards associated with the launch. If the launch site is repositioned as a result of this environmental concern, the Coast Guard will revise the location of the safety zone accordingly and publish the new location in the **Federal Register**.

List of Subjects in 33 CFR Part 165

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

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

■ 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 § 165.535 to read as follows:

§ 165.535 Safety Zone: Atlantic Ocean, Vicinity of Cape Henlopen State Park, Delaware.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within the area bounded by a line drawn north from the tip of Cape Henlopen located at latitude 38°48.2′ N, longitude 75°05.5′ W, to a point located at latitude 38°49.4′ N, longitude 75°05.5′ W; thence east to a point located at latitude 38°49.4′ N, longitude 75°01.4′ W; thence south to a point located at latitude 38°43.0′ N, longitude 75°01.4′ W; thence west to a point on the shoreline located at latitude 38°43.0′ N, longitude 75°04.5′ W; thence north following the shoreline, to a point located at latitude 38°48.2′ N, longitude 75°05.5′ W. All coordinate refer to Datum: NAD 1983.

(b) *Regulation.* The general regulations governing safety zones contained in § 165.23 apply. Vessels may not enter the safety zone without first obtaining permission from the Captain of the Port (COTP) Philadelphia.

(c) *Dates.* This section is enforced annually on the second Saturday in May and the following day.

(d) *General information.* (1) Those times during which hazardous conditions exist inside the safety zone will be announced by Broadcast Notice to Mariners. General permission to enter the safety zone will be broadcast during non-hazardous times. (2) You can gain access to the safety by calling Group Atlantic City command center at telephone number (609) 677–2222 and on VHF channel 13 or 16.

(3) The COTP Philadelphia may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing this safety zone.

Dated: May 6, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard, Acting.

[FR Doc. 04–11234 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 04–001]

RIN 1625–AA00

Security Zones; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a temporary security zone in the Valdez Narrows, Port Valdez, Alaska. These security zones are necessary to protect the Alyeska Marine Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This rule is effective from April 9, 2004, until October 31, 2004. Comments and related material must reach the Coast Guard on or before June 30, 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 COTP Prince William Sound 04–001 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Catherine Huot, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7262.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001, and the continuing threat that remains from those who committed those acts. Also, in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

Section 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

Section 165.T17–004—Security zone; Port Valdez, and

Section 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule issued in April 2002, which expired July 30, 2002, created temporary § 165.T17–009, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska—security zone''.

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired July 30, 2002. This extension was to allow for the completion of a notice-and-comment rulemaking to be completed to create permanent security zones to replace the temporary zones. Then on October 23, 2002, we published a notice of proposed rulemaking that sought public comment on establishing permanent security zones similar to the temporary security zones (67 FR 65074). The comment period for that NPRM ended December 23, 2002.

Although no comments were received that would result in changes to the proposed rule an administrative omission was found that resulted in the need to issue a supplemental notice of proposed rulemaking (SNPRM) to address the ''Collection of Information'' section of the proposed rule (68 FR 14935, March 27, 2003). Then, on December 30, 2002, we issued a

temporary final rule (68 FR 26490, May 16, 2003) that established security zones to extend the temporary security zones until June 30, 2003. This extension was to allow for a rulemaking for the permanent security zones to be completed. Then, on September 12, 2003 we issued a temporary final rule (68 FR 62009, October 31, 2003) that established security zones to extend the temporary security zones through March 12, 2004.

This temporary final rule creates temporary security zones through October 31, 2004, to allow for the rulemaking involving the SNPRM to be completed. Elsewhere in today's **Federal Register** we have published a second SNPRM proposing permanent security zones identical to the ones is this TFR.

Discussion of This Temporary Rule

This temporary final rule establishes three security zones. The Trans-Alaska Pipeline Valdez Marine Terminal Security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving Security Zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows Security Zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is active only when a TAPS Tanker is in the zone.

The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones in order to mitigate the impact on commercial and recreational users. This temporary final rule establishes a uniform transition from the temporary operating zones while the rulemaking for permanent security zones is completed.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation without a notice of proposed rulemaking, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 04–001, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

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 proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Economic impact is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tanker Moving Security Zone is in effect for a short duration.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tanker Moving Security Zone is in effect for a short duration. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

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 affect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment in Prince William Sound. It simply provides guidelines for vessels transiting in the Captain Of The Port, Prince William Sound Zone so that vessels may transit safely in the vicinity of the Port of Valdez and the TAPS terminal. 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 record keeping requirements, Safety measures, Vessels, Waterways.

■ For the reasons set forth 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. From April 9, 2004, through October 31, 2004, add new temporary § 165.T17–030 to read as follows:

§ 165.T17–030 Port Valdez and Valdez Narrows, Valdez, Alaska-security zones.

(a) The following areas are security zones—

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′25″ N, 146°26′18″ W; thence northerly to yellow buoy at 61°06′25″ N, 146°26′18″ W; thence east to the yellow buoy at 61°06′25″ N, 146°21′20″ W; thence south to 61°04′25″ N, 146°21′20″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′08″ N, 146°21′15″ W) and Sawmill Spit (61°05′08″ N, 146°26′19″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85–20(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters approximately 200 yards either side of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′15″ N, 146°37′18″ W; thence south west to 61°04′00″ N, 146°39′52″ W; thence southerly to 61°02′32.5″ N, 146°41′25″ W; thence north west to 61°02′40.5″ N, 146°41′47″ W; thence north east to 61°04′07.5″ N, 146°40′15″ W; thence north east to 61°05′22″ N, 146°37′38″ W; thence south east back to the starting point at 61°05′15″ N, 146°37′18″ W.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters within approximately 200 yards on either side of the Valdez Narrows Optimum Track line.

(b) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service, as required under 33 CFR part 161 and § 165.1704, may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: April 9, 2004.

M.A. Swanson,

Commander, United States Coast Guard, Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 04–11231 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7663–6]

Official Release of the MOBILE6.2 Motor Vehicle Emissions Factor Model and the December 2003 AP–42 Methods for Re-Entrained Road Dust

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is approving and announcing the availability of the MOBILE6.2 motor vehicle emissions factor model for official use in particulate matter (PM_{10} and $PM_{2.5}$) SIPs and transportation conformity determinations outside of California. MOBILE6.2 is an update to MOBILE6 which adds the capability to estimate direct exhaust and brake and tire wear particulate matter emission factors for PM_{10} and $PM_{2.5}$, and exhaust emission factors for particulate precursors to the MOBILE6 model. MOBILE6.2 is a substantial improvement over previous methods for estimating PM emissions and incorporates EPA's most current estimates of PM emissions for use by state and local governments to meet Clean Air Act requirements.

EPA is also approving and announcing the availability of new methods for the estimation of re-entrained road dust emissions from cars, trucks, buses, and motorcycles on paved and unpaved roads for PM_{10} and $PM_{2.5}$ state implementation plans (SIPs) and transportation conformity analyses. These new methods are incorporated in the December 2003 edition of Chapter 13 of Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources.

Today's action also starts time periods after which MOBILE6.2 and the December 2003 AP–42 methods are required to be used in new transportation conformity analyses for PM_{10} emissions.

EPA strongly encourages areas to use the interagency consultation process to examine how MOBILE6.2 and the December 2003 AP–42 methods will affect future transportation conformity analyses, so, if necessary, PM_{10} SIPs and motor vehicle emissions budgets can be revised with MOBILE6.2 and AP–42 or transportation plans and programs can be revised as appropriate prior to the end of the conformity grace period.

DATES: EPA's approval of the MOBILE6.2 emissions factor model and December 2003 AP–42 methods for re-entrained road dust is effective May 19, 2004. See below for further information regarding how today's approval starts time periods after which MOBILE6.2 and the December 2003 AP–42 methods are required in new transportation conformity analyses and certain SIP and motor vehicle emissions budget revisions.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, please send an e-mail to EPA at *mobile@epa.gov* or contact EPA at (734) 214–4636 for technical model questions about MOBILE6.2. Please send an e-mail to EPA at *info.chief@epa.gov* or contact EPA at (919) 541–1000 for technical questions about the December 2003 AP–42 methods.

SUPPLEMENTARY INFORMATION:

Availability of Models and Support Materials

Copies of the official version of the MOBILE6.2 model are available on EPA's MOBILE Web site, *http://www.epa.gov/otaq/m6.htm.* The MOBILE Web site also contains the following support materials for implementing the new model: a detailed MOBILE6.2 User's Guide; EPA's ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity''; EPA's ''Technical Guidance on the Use of MOBILE6.2 for Emission Inventory Preparation''; and a list of Frequently Asked Questions about MOBILE6.2. EPA will continue to update this Web site in the future as other MOBILE6.2 support materials are developed.

Individuals who wish to receive EPA announcements related to the MOBILE model should subscribe to the EPA-MOBILENEWS e-mail listserver. To subscribe to the EPA-MOBILENEWS listserver, write the following in the body of the e-mail message:

subscribe EPA-MOBILENEWS FIRSTNAME LASTNAME where FIRSTNAME and LASTNAME is your name (for example: John Smith) and send the e-mail to the EPA Listserver at *listserver@unixmail.rtpnc.epa.gov.*

Your e-mail address will then be added to the list of subscribers and a confirmation message will be sent to your e-mail address. Whenever a message is posted to the EPA-MOBILENEWS listserver by the listserver owner (the Assessment and Standards Division of the EPA Office of Transportation and Air Quality), a copy of that message will be sent to every person who has subscribed.

You can remove yourself from the list by sending another message to the listserver address. This message must be sent from the same e-mail address that you used to subscribe, and should contain the message: unsubscribe EPA-MOBILENEWS.

Copies of the official version of the December 2003 edition of Sections 13.2.1 and 13.2.2 of AP–42 can be found at *www.epa.gov/ttn/chief/ap42/ch13/index.html.* In the rest of this document, unless otherwise indicated, ''AP–42'' refers to the December 2003 edition of Sections 13.2.1 and 13.2.2 of AP–42.

I. What Is MOBILE6.2 and How Is It Different From MOBILE6?

MOBILE is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states outside of California. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs.

MOBILE is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on MOBILE are also used to meet the federal Clean Air Act's state implementation plan (SIP) and transportation conformity requirements.

The previous version of MOBILE, known as MOBILE6, calculated emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. MOBILE6.2 is an update to MOBILE6 which adds the capability to estimate direct particulate matter (PM) emission factors for PM_{10} and $PM_{2.5}$, and emission factors for particulate precursors, to the original MOBILE6 model. In other words, MOBILE6.2 allows the estimation of emission factors for HC (and air toxics), NO_X, CO, gaseous SO_2, ammonia, and direct PM from vehicle exhaust and brake and tire wear. MOBILE6.2 also corrects some minor coding errors in the portion of the model code that estimates HC, NO_X, and CO emission factors, and it adds the capability of entering hourly relative humidity values. MOBILE6.2 also incorporates some revisions to CO emission factors for cars and light-duty trucks that meet national low emission vehicle (NLEV), low emission vehicle (LEV), and Tier 2 vehicle standards.

Functionally, MOBILE6.2 now replaces MOBILE6 as the highway vehicle emission factor model that EPA will maintain and support.

II. What Is the Impact of MOBILE6.2 on Ozone and CO SIPs and Conformity Determinations?

Although MOBILE6.2 includes some corrections and enhancements to parts of the model that estimate emissions of HC, NO_X, and CO, the impact of these changes is generally small. Even though MOBILE6.2 is very similar to MOBILE6 for these pollutants, states and local agencies outside of California should use MOBILE6.2 for future HC, NO_X, and CO SIPs and conformity analyses in order to take full advantage of the improvements incorporated in this version. SIPs and conformity analyses already in progress with MOBILE6 can be completed using MOBILE6 as determined through the interagency consultation process. Because the changes in HC, NO_X, and CO emissions in MOBILE6.2 are generally very small, the release of MOBILE6.2 does not start a new grace period before MOBILE6.2 is required to be used for all new transportation conformity analyses in ozone or CO nonattainment or maintenance areas and it does not trigger the need for any new ozone or CO SIP revisions.

III. What Are the December 2003 AP–42 Methods?

Motor vehicle emissions inventories for PM are comprised of four components: exhaust emissions, emissions from brake wear, emissions from tire wear, and re-entrained road dust. MOBILE6.2 does not include the capability of estimating the emissions of re-entrained road dust as the result of motor vehicle activity. EPA has developed separate revised AP–42 methodologies for estimating re-entrained road dust from paved and unpaved roads. These new methods for estimating road dust emission factors for paved and unpaved roads are being incorporated in EPA's document AP–42. These new AP–42 methodologies (AP–42, Sections 13.2.1, Paved Roads and 13.2.2, Unpaved Roads, each dated December 2003) replace previous methods for estimating re-entrained road dust emissions for these categories with some limitations. AP–42 is the approved method only for situations for which silt loading, mean vehicle weight, and mean vehicle speed fall within ranges given in AP–42 section 13.2.1.3 and with reasonably free-flowing traffic. For other conditions, areas may use an appropriate method approved by EPA on a case-by-case basis. In some areas, alternate methods may be more appropriate than AP–42 given specific local conditions even within the parameters given in AP–42 section 13.2.1.3. State and local agencies should consult with EPA for approval of alternative approaches. This policy is described in more detail in the document ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity'' (available at *http://www.epa.gov/otaq/models/mobile6/mobil6.2_letter.pdf).* The following discussion of the use of AP–42 in SIPs and conformity determinations also applies to approved alternatives to AP–42.

IV. PM_{10} SIP Policy for MOBILE6.2 and AP–42

EPA has articulated its policy regarding the use of MOBILE6.2 and AP–42 in PM_{10} SIP development in its ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity.'' Today's action highlights certain aspects of the guidance, but state and local governments should refer to the guidance for more detailed information on how and when to use MOBILE6.2 and AP–42 in attainment and maintenance PM_{10} SIPs, inventory updates, and other PM_{10} SIP submission requirements. See *Availability of Related SIP Policies* to obtain the MOBILE6.2 and AP–42 policy guidance.

PM_{10} SIPs that EPA has already approved are not typically required to be revised now that EPA has approved MOBILE6.2 and AP–42. Although MOBILE6.2 and AP–42 should be used in new PM_{10} SIP development as expeditiously as possible, EPA also recognizes the time and level of effort that States have already undertaken in PM_{10} SIP development with previous models or methods. States that have already submitted PM_{10} SIPs or will submit PM_{10} SIPs shortly after EPA's approval of MOBILE6.2 and AP–42 are not required to revise these SIPs simply because a new motor vehicle emissions model is now available. States can choose to use MOBILE6.2 in these SIPs, for example, if it is determined that future conformity determinations would be ensured through such a SIP revision. However, EPA does not believe that a State's use of an earlier model such as PART5 should be an obstacle to EPA approval for SIPs that have been or will soon be submitted, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (*e.g.*, attainment modeling for an attainment SIP has already been completed with an earlier model). It would be unreasonable to require States to revise these SIPs with MOBILE6.2 and AP–42 since significant work has already occurred, and EPA intends to act on these SIPs in a timely manner.

States should use MOBILE6.2 and AP–42 where PM_{10} SIP development is in its initial stages or hasn't progressed far enough along that switching to MOBILE6.2 and AP–42 would create a significantly adverse impact on State resources. For example, PM_{10} SIPs that will be submitted late in 2004 should be based on MOBILE6.2 and AP–42 since there is adequate time to incorporate the new model's results. MOBILE6.2 and AP–42 should be incorporated into these SIPs since emissions estimates in these models are based on the best information currently available, as required by Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

V. PM_{10} Transportation Conformity Policy for MOBILE6.2 and AP–42

Transportation conformity is a Clean Air Act requirement to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air pollution violations; worsen existing violations; or delay timely attainment of federal air quality standards.

The transportation conformity rule (40 CFR part 93) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA. Section 176(c)(1) of the Clean Air Act states that ''. * * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates * * *.'' When we approve new emissions models such as MOBILE6.2 and AP–42, a grace period is established before the models are required for conformity analyses. The conformity rule provides for a grace period for new emissions models of between 3–24 months.

EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (58 FR 62211):

''EPA and [the Department of Transportation (DOT)] will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an

opportunity to revise their SIPs before MPOs must use the model's new emissions factors.''

In consultation with the DOT, EPA considers many factors in establishing the length of the grace period, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111).

Upon consideration of all of these factors, EPA is establishing a 2-year grace period, which begins today and ends on May 19, 2006, before MOBILE6.2 and AP–42 are required for new PM_{10} conformity analyses in most cases. During this grace period, areas should use the interagency consultation process to examine how MOBILE6.2 and AP–42 will affect their future conformity determinations.

However, the grace period will be shorter than 2 years for PM_{10} if an area revises its SIP and budgets with MOBILE6.2 and AP–42 and such budgets become applicable for conformity purposes prior to the end of the 2-year grace period. For example, if an area revises a previously submitted (but not approved) PART5-based PM_{10} SIP with MOBILE6.2 and AP–42 and EPA finds the revised budgets adequate for conformity, such budgets would apply for conformity on the effective date of the **Federal Register** notice announcing EPA's adequacy finding.

During the grace period, areas can use earlier models such as PART5 for PM_{10} conformity determinations or choose to use MOBILE6.2 and AP–42 on a faster time frame. When the grace period ends on May 19, 2006, MOBILE6.2 will become the only approved motor vehicle emissions model for new PM_{10} transportation conformity analyses outside of California and AP–42 will become the approved method for estimating re-entrained road dust unless an alternate method is approved as described in section III above. In general, this means that all new PM_{10} conformity analyses started after the end of the 2-year grace period must be based on MOBILE6.2 and AP–42, even if the SIP is based on PART5. As discussed above, the grace period for new conformity analyses would be shorter for PM_{10} if an area revised its SIP and budgets with MOBILE6.2 and AP–42 and such budgets became applicable for conformity purposes prior to the end of the 2-year grace period. EPA strongly encourages areas to use the consultation process to examine how MOBILE6.2 and AP–42 will affect future conformity determinations, so, if necessary, PM_{10} SIPs and budgets can be revised with MOBILE6.2 and AP–42 or transportation plans and programs can be revised as appropriate prior to the end of the grace period.

Finally, the conformity rule provides some flexibility for analyses that are started before or during the grace period. Regional conformity analyses that began before the end of the grace period may continue to rely on earlier models such as PART5. Conformity determinations for transportation projects may also be based on an earlier model if the regional analysis was begun before the end of the grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (see 40 CFR 93.111(c)). The interagency consultation process should be used if it is unclear whether an analysis based on an earlier model was begun before the end of the grace period.

The release of MOBILE6.2 and AP–42 does not trigger the need for quantitative conformity hot-spot modeling to estimate concentrations of PM_{10} at this time. However, qualitative hot spot analyses are still required in PM_{10} nonattainment and maintenance areas.

VI. $PM_{2.5}$ SIP and Transportation Conformity Policy for MOBILE6.2 and AP–42

EPA has not yet finalized implementation policy for the $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). However, when that policy is finalized and $PM_{2.5}$ nonattainment areas have been designated, MOBILE6.2 (except in California) and AP–42 (except in areas where another dust methodology has been approved) will be the approved models for estimating motor vehicle exhaust, brake and tire wear, and re-entrained road dust emissions in $PM_{2.5}$ SIPs and conformity determinations, until they are replaced by newer models or methods. No $PM_{2.5}$ SIPs have previously been done using other models and therefore, the release of MOBILE6.2 and AP–42 does not constitute a change in models which might result in inconsistencies between the SIP and transportation analyses. As a result, there is no need for a $PM_{2.5}$ conformity grace period for MOBILE6.2 and AP–42. MOBILE6.2 (except in California) and AP–42 (except in areas where another dust methodology has been approved) must be used in all $PM_{2.5}$ conformity analyses, until they are replaced by newer approved methods or models.

Dated: May 11, 2004.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 04–11340 Filed 5–18–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0130; FRL–7359–1]

Indoxacarb; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues/combined residues of indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl]amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, and its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, in or on cherry, sweet and cherry, tart. E.I. DuPont de Nemours and Company, DuPont Crop Protection requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on May 21, 2007.

DATES: This regulation is effective May 19, 2004. Objections and requests for hearings must be received on or before July 19, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0130. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm.

119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address:*kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E–CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of March 17, 2004 (69 FR 12664–12670) (FRL–7345–2), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3G6797) by E.I. DuPont de Nemours and Company, DuPont Crop Protection, Wilmington, DE. This notice included a summary of the petition prepared by DuPont, the registrant.

The petition requested that 40 CFR 180.564 be amended by establishing a tolerance for combined residues of the insecticide indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl]amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, and its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, in or on cherry, sweet and cherry, tart at 1.0 part per million (ppm). The tolerance will expire on May 21, 2007. One comment was received from a private citizen objecting to this tolerance. This commenter opposes all residues, tolerances, exemptions from tolerance, animal testing, or the Agency's risk assessment process, and has objected to numerous Agency actions over the past several months.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl]amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, and its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, on cherry, sweet and cherry, tart at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by indoxacarb are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—ACUTE, SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	DPX-MP062 NOAEL = M 3.1 mg/kg/day, F 2.1 mg/kg/day LOAEL = M 6.0 mg/kg/day, F 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency
870.3150	90–Day oral toxicity in nonrodents	DPX-JW062 NOAEL = 5.0 mg/kg/day LOAEL = 19 mg/kg/day based on hemolytic anemia, as indicated by decrease in HGB, RBCs; increases in platelets, increased reticulocytes; and secondary histopathologic findings indicative of blood breakdown (pigment in Kupffer cells, renal tubular epithelium, and spleen and bone marrow macrophages); increase in splenic EMH; and RBC hyperplasia in bone marrow in dogs
870.3200	21/28–Day dermal toxicity	DPX-MP062 NOAEL = 2,000 mg/kg/day LOAEL = >2,000 mg/kg/day in rats DPX-MP062 NOAEL = 50 mg/kg/day LOAEL = 500 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in F, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight M only, gross discoloration), clinical signs of toxicity in both sexes in rats
870.3700	Prenatal developmental in rodents	DPX-MP062 Maternal NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased mean body weights, body weight gains, food consumption Developmental NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased fetal weights DPX-JW062 Maternal NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on mortality, clinical signs, and decreased mean body weights, body weight gains, and food consumption Developmental NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on decreased numbers of live fetuses/litter. DPX-JW062 Maternal NOAEL = 1.1 mg/kg/day LOAEL = 2.2 mg/kg/day based on decreased mean body weights, body weight gains, food consumption, and food efficiency. Developmental NOAEL = 1.1 mg/kg/day LOAEL = 2.2 mg/kg/day based on decreased fetal body weights
870.3700	Prenatal developmental in nonrodents	DPX-JW062 - rabbits Maternal NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on slight decreases in maternal body weight gain and food consumption. Developmental NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on decreased fetal body weights and reduced ossification of the sternebrae.
870.3800	Reproduction and fertility effects	DPX-JW062 Parental/Systemic NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decreased body weights, body weight gains, and food consumption of F0 females, and increased spleen weights in the F0 and F1 females Reproductive NOAEL = 6.4 mg/kg/day LOAEL = 6.4 mg/kg/day Offspring NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decrease in the body weights of the F1 pups during lactation.

TABLE 1.—ACUTE, SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4100	Chronic toxicity rodents	DPX-JW062 NOAEL = M 5, F 2.1 mg/kg/day LOAEL = M 10, F 3.6 mg/kg/day based on decreased body weight, body weight gain, and food consumption and food efficiency; decreased HCT, HGB and RBC at 6 months in F only. No evidence of carcinogenic potential
870.4100	Chronic toxicity dogs	DPX-JW062 NOAEL = M 2.3, F 2.4 mg/kg/day LOAEL = M 18, F 19 mg/kg/day based on decreased HCT, HGB and RBC; increased Heinz bodies and reticulocytes and associated secondary microscopic changes in the liver, kidneys, spleen, and bone marrow; increased absolute and relative liver weights.
870.4200	Carcinogenicity rats	DPX-JW062 see 870.4100 No evidence of carcinogenicity
870.4300	Carcinogenicity mice	DPX-JW062 NOAEL = M 2.6, F4.0 mg/kg/day LOAEL = M 14, F 20 mg/kg/day based on decreased body weight, body weight gain, and food efficiency and clinical signs indicative of neurotoxicity. No evidence of carcinogenicity
870.5100	Gene mutation	DPX-MP062 strains TA97a, TA98, TA100 and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10-5,000 μg/plate DPX-JW062 strains TA97a, TA98, TA100 and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10-5,000 μg/plate.
870.5300	Gene mutation	DPX-MP062 negative for mutagenic activity for the following concentration ranges: 3.1-250 μg/mL (-S9); 3.1-250 μg/mL (+S9) DPX-JW062 negative for mutagenic activity for the following concentration ranges: Negative;100-1,000 μg/mL (-S9); 100- 1,000 μg/mL (+S9), precipitate ≥1,000 μg/mL
870.5375	Cytogenetics	DPX-MP062 No evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 15.7-1,000 μg/mL (+S9) DPX-JW062 No evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 19-300 μg/mL (-S9), 19-150 μg/mL (+S9); partial insoluble and cytotoxicity ≥ 150 μg/mL
870.5395	Cytogenetics	DPX-MP062 No evidence of mutagenicity for the following dose ranges: 3,000-4,000 mg/kg - males; 1,000-2,000 mg/kg - females DPX-JW062 No evidence of mutagenicity at 2,500 or 5,000 mg/kg
870.5550	Other effects	DPX-MP062 No evidence of mutagenic activity at the following concentration range: 1.56-200 μg/mL; cytotoxicity was seen at concentrations of ≥100 μg/mL DPX-JW062 No evidence of mutagenic activity at the following concentration range: 0.1-50 μg/mL, cytotoxicity observed at ≥50 μg/mL

TABLE 1.—ACUTE, SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Acute neurotoxicity screening battery	DPX-MP062 NOAEL = M 100, F 12.5 mg/kg LOAEL = M 200 mg/kg based on decreased body weight gain, decreased food consumption, decreased forelimb grip strength, and decreased foot splay. F 50 mg/kg based on decreased body weight, body weight gain, and food consumption DPX-JW062 NOAEL >= M 2,000 mg/kg = F < 500 mg/kg LOAEL > M 2,000 mg/kg F < 500 mg/kg based on clinical signs, decreased body weight gains and food consumption, and FOB effects
870.6200	Subchronic neurotoxicity screening battery	DPX-MP062 NOAEL = M 0.57, F 0.68 mg/kg/day LOAEL = M 5.6, F 3.3 mg/kg/day based on decreased body weight and alopecia
870.7485	Metabolism and pharmacokinetics	Both DPX-MP062 and DPX-JW062 were extensively metabolized and the metabolites were eliminated in urine, feces, and bile. The metabolite profile for DPX-JW062 was dose dependent and varied quantitatively between males and females. Differences in metabolite profiles were also observed for the different label positions (indanone and trifluoromethoxyphenyl rings). All biliary metabolites undergo further biotransformation in the gut. The proposed metabolic pathway for both DPX-MP062 and DPX-JW062 has multiple metabolites bearing one of the two ring structures (see 870.4100 chronic toxicity rodents above)

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. Discuss any additional UFs (other than the FQPA SF) used in the assessment.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^6 or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for indoxacarb used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13-50 years of age)	NOAEL = 2.0 mg/kg/day UF = 100 Acute RfD = 0.02 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.02 mg/kg/day	Developmental rat toxicity study LOAEL = 4.0 mg/kg/day based on decreased fetal body weight

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	NOAEL = 12 mg/kg/day UF = 100 Acute RfD = 0.12 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.12 mg/kg/day	Acute oral rat neurotoxicity study LOAEL = 50 mg/kg/day based on decreased body weight and body weight gain in females
Chronic dietary (all populations)	NOAEL= 2.0 mg/kg/day UF = 100 Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.02 mg/kg/day	90–day rat subchronic toxicity study, 90–day rat neurotoxicity study, chronic/carcinogenicity rat study LOAEL = 3.3 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency; decreased hematocrit, hemoglobin and red blood cells only at 6 months. 3.3 mg/kg/day is the lowest LOAEL of the three studies
Short-term dermal (1 to 7 days) (Occupational)	Dermal (or oral) study NOAEL= 50 mg/kg/day	LOC for MOE = 100 (Occupational)	28–day rat dermal toxicity study LOAEL = 500 mg/kg/day based on based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight males only, gross discoloration), and clinical signs of toxicity in both sexes
Short-term inhalation (1-7 days) (Occupational)	oral study NOAEL =2.0 mg/kg/day (inhalation absorption rate = 100%	LOC for MOE = 100 (Occupational)	Rat developmental toxicity study. Maternal LOAEL = 4.0 mg/kg/day based on decreased mean maternal body weights, body weight gains, and food consumption
Cancer (oral, dermal, inhalation)	"Not likely" to be carcinogenic to humans	N/A	No evidence of carcinogenicity in either the rat or mouse in acceptable carcinogenicity studies and no evidence of mutagenicity

*The reference to the FQPA SF refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.564) for the combined residues of indoxacarb, in or on a variety of raw agricultural commodities. Including tolerances already established for: Apple at 1.0 ppm, Apple, wet pomace at 3.0 ppm, Brassica, head and stem, subgroup at 5.0 ppm, Cattle, goat, horse, sheep, and hog fat at 0.75 ppm, Cattle, goat, horse, sheep, and hog meat at 0.03 ppm, Cattle, goat, horse, sheep, and hog meat byproducts at 0.02 ppm, Corn, sweet, forage at 10 ppm, Corn, sweet, kernel plus cob with husk removed at 0.02 ppm, Corn, sweet stover at 15 ppm, Cotton gin byproducts at 15 ppm, Cotton, undelinted seed at 2.0 ppm, Lettuce, head at 4.0 ppm, Lettuce, leaf at 10.0 ppm, Milk at 0.10 ppm, and Milk, fat at 3.0 ppm, Pear at 0.20 ppm, Vegetables, fruiting, group at 0.50 ppm, and a time-limited tolerance for peach at 10.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from indoxacarb in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A partially refined, acute dietary exposure assessment was performed with use of some anticipated residues (ARs) from field trial data, processing factors (where applicable), and assuming 100% crop treated. ARs for meat, milk, poultry, and eggs (MMPE) raw agricultural commodities (RACs) were calculated also.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic exposure estimates are expressed in mg/kg bw/day and as a pest percent of the cPAD. The chronic dietary assessment assumed tolerance level residues, DEEM™ default processing factors, assumed 100% CT for all crops other than cherries and peaches, and 1% CT for the peach EUP (300 acres) and cherry EUP (180) acres.

iii. *Cancer.* There is no evidence for mutagenicity and there is no evidence of

carcinogenicity in either the rat or mouse. Indoxacarb has been classified as ''not likely to be carcinogenic in humans'' by the Agency; therefore, no carcinogenic dietary risk analysis was performed.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F) of the FFDCA , EPA may require registrants to submit data on PCT.

Dietary exposure estimates were based on 1% CT for peaches and cherries. This PCT of 1% was based on the fact that the 2–year experimental use permit s were issued for only 300 acres of peaches, and 180 acres of cherries to be treated annually, which amounts to 0.2% of the total peach and cherry acreages in the United States. The reason for using 1% instead of 0.2% is to allow for any uncertainties in the residue evaluation. Before making this tolerance permanent, reevaluation of dietary exposure will be performed using all available information. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described 1% for indoxacarb used on peaches and cherries is reliable and has a valid basis. A 2–year EUP has been issued for both of these uses, which will allow for use of indoxacarb on 300 acres of peaches and 180 acres of cherries in some eastern states. Before these uses can be expanded for treatment of greater than 300 or 180 acres respectively per year, permission from the Agency must be obtained. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which Indoxacarb may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for indoxacarb in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of indoxacarb.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. FIRST and PRZM/EXAMS incorporate an index reservoir environment. FIRST and PRZM/EXAMS models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are high-end to bounding estimates on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to indoxacarb they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated EECs of indoxacarb for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 3.7 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Indoxacarb is not registered for use on any sites that would result in residential exposure.

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

EPA does not have, at this time, available data to determine whether

indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no evidence for either qualitative or quantitative susceptibility. In all developmental studies, the developmental endpoint occurs at the maternal LOAEL or above. Although there is no rabbit developmental toxicity study with indoxacarb, a study is not required since: (1) studies both using methyl cellulose comparing JW062 in the rabbit and rat demonstrate that the toxicity profiles for the rat and rabbit are similar and that the rat is the more sensitive species; (2) range finding studies in the rat comparing indoxacarb and JW062 indicate that the maternal and external developmental toxicity are comparable; (3) a dietary developmental toxicity study in the rat with JW062 had comparable toxicity to the gavage indoxacarb rat developmental toxicity study. Developmental toxicity only occurred at levels at or above maternal toxicity.

The reproduction toxicity study with JW062 can be used to satisfy the requirement for an indoxacarb study because: (1) systemic toxicity is at similar doses and of similar magnitude to that observed in subchronic feeding studies with both indoxacarb and JW062; (2) based on the data base, EPA determined that there was support for using data from dietary studies conducted with JW062 to satisfy the data requirements for indoxacarb.

The Agency has required a developmental neurotoxicity study as confirmatory data due to:

- Clinical signs of neurotoxicity in several studies, males and females, mice and rats, at some doses that do not cause mortality.
- Signs of neurotoxicity in the acute neurotoxicity study rat with indoxacarb (males and females), no mortality in males at neurotoxic doses.
- Clinical signs of neurotoxicity in the 90–day toxicity study rat indoxacarb (females), mortality.
- Clinical signs of neurotoxicity in the 90–day toxicity study mouse with the racemic mixture, JW062 (males and females), no mortality in females at neurotoxic doses, mortality in males.
- Clinical signs of neurotoxicity in the 18–month carcinogenicity study mouse with JW062 (males and females) high and mid dose, mortality at the high but no mortality at the mid dose.
- Clinical signs of neurotoxicity in the developmental toxicity study rat with JW062 (using methyl cellulose as the vehicle), at doses causing mortality.

3. *Conclusion*. The Agency concluded that the FQPA safety factor could be reduced to 1X for indoxacarb because:

- There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.
- The requirement of a developmental neurotoxicity study is not based on the criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study - and a safety factor (e.g., neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) - and therefore does not warrant an FQPA safety factor.
- The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children.
- There are no registered residential uses at the current time.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are high-end to bounding estimates on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to indoxacarb will occupy 12% of the aPAD for the U.S. population, 64% of the aPAD for females 13 years and older, 67% of the aPAD for infants less than 1 year old and 36 of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to indoxacarb in drinking water. After calculating DWLOCs and comparing them to the

EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.12	12	13.7	0.02	3700
Females 13 +	0.12	64	13.7	0.02	220
All infants (less than 1 year)	0.12	67	13.7	0.02	400
Children (1 to 2 years)	0.12	36	13.7	0.02	760

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to indoxacarb from food will utilize 31% of the cPAD for the U.S. population, 29% of the cPAD for infants less than 1 year old and 80% of the cPAD for children 1 to 2 years old. There are no residential uses for indoxacarb that result in chronic residential exposure to indoxacarb. In addition, there is potential for chronic dietary exposure to indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 if this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO INDOXACARB

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.02	31	3.7	0.02	480
All infants (less than 1 year) old	0.02	29	3.7	0.02	140
Children (1 to 2 years)	0.02	80	3.7	0.02	40

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either rat or mouse. Indoxacarb has been classified as ''not likely to be carcinogenic in humans'' by the Agency; therefore, indoxacarb is not expected to pose carcinogenic risk when used as directed.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to indoxacarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of indoxacarb; therefore, international harmonization is not an issue at this time.

V. Conclusion

Therefore, the tolerance is established for combined residues of indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl]amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, and its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, in or on cherry, sweet and cherry, tart at 1.0 ppm. This tolerance will expire and is revoked on May 21, 2007.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue

to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0130 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 19, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0130, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.564 is amended by alphabetically adding the following commodities to the table in paragraph (a)(2) to read as follows:

§ 180.564 Indoxacarb; tolerances for residues.

(a) * * * P≤(2) * * *

Commodity	Parts per million	Expiration/revocation date
Cherry, sweet	1.0	May 21, 2007
Cherry, tart	1.0	May 21, 2007
* *	* * *	

* * * * *

[FR Doc. 04–11346 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AB30

Medicare and State Health Care Programs; Fraud and Abuse: OIG Civil Money Penalties Under the Medicare Prescription Drug Discount Card Program

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: In accordance with section 1860D–31 of the Social Security Act, this rule sets forth the OIG's new authority for imposing civil money penalties (CMPs) against endorsed sponsors under the Medicare prescription drug discount card program that knowingly engage in false or misleading marketing practices; overcharge program enrollees; or misuse transitional assistance funds.

DATES: *Effective date:* These regulations are effective on June 18, 2004.

Comment date: We will consider comments if we receive them at the appropriate address, as provided in the address section below, no later than 5 p.m. on July 19, 2004.

ADDRESSES: In commenting, please refer to file code OIG–54–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–54–FC, Room 5246, Cohen Building, 330 Independence Avenue, SW,. Washington, DC 20201.

Please allow sufficient time for us to receive mailed comments on time in the event of delivery delays. Because access to the Cohen Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the OIG drop box located in the main lobby of the building. For information on viewing public comments, see section IV. in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Management and Policy, (202) 619–0089; or Niteesha Gupte, Office of Counsel to the Inspector General, (202) 619–1306.

SUPPLEMENTARY INFORMATION:

I. OIG Civil Money Penalties

In 1981, Congress enacted the civil money penalty statute, section 1128A of

the Social Security Act (42 U.S.C. 1320a–7a), as one of several administrative remedies to combat increases in fraud and abuse. The civil money penalty (CMP) law authorized the HHS Secretary and the Inspector General to impose CMPs and program exclusions on individuals and entities whose wrongdoing caused injury to HHS programs or their beneficiaries. Since 1981, the CMP provisions have been expanded to apply by reference to numerous types of fraudulent and abusive activities.

II. The Medicare Prescription Drug, Improvement, and Modernization Act

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act (MPDIMA) of 2003, as enacted by Public Law 108–173 and codified in section 1860D–31 of the Social Security Act (the Act), provides for a voluntary prescription drug discount card program for Medicare beneficiaries entitled to benefits, or enrolled, under Part A or enrolled under Part B, excluding beneficiaries entitled to medical assistance for outpatient prescription drugs under Medicaid, including section 1115 waiver demonstrations. Eligible beneficiaries may access negotiated prices on prescription drugs by enrolling in drug discount card programs offered by Medicare-endorsed sponsors.[1] The Medicare drug discount card program is intended to serve as a transitional program providing immediate assistance to Medicare beneficiaries with prescription drug costs during calendar years 2004 and 2005 while preparations are made for implementation of the Medicare drug benefit under Medicare Part D in 2006.

The implementing regulations establishing the requirements for the MPDIMA program were published in the **Federal Register** as an interim final rule with comment period by the Centers for Medicare & Medicaid Services (CMS) on December 15, 2003 (68 FR 69840).[2]

1. Eligibility Procedures and Enrollment

Sections 1860D–31(b)(1) and (2) of the Act, and 42 CFR 403.810(a) and (b) of the CMS regulations, establish the eligibility criteria for the Medicare drug discount card program and for transitional assistance. Section 1860D–31(f)(1)(A) of the Act directs the Secretary to specify the procedures for determining a beneficiary's eligibility for the Medicare drug discount card program or transitional assistance, and section 1860D–31(c)(1) directs the Secretary to establish a process for eligible beneficiaries enrolling in, and disenrolling from, an endorsed program. These provisions have been codified, respectively, in 42 CFR 403.810 and 403.811 of the CMS regulations.

2. Endorsed Sponsors

Section 1860D–31(a)(1)(A) of the Act requires the Secretary to endorse qualified applicants seeking to offer endorsed discount card programs to Medicare beneficiaries. MPDIMA sets forth specific requirements that applicants must satisfy to be eligible for endorsement and that endorsed sponsors must meet to retain their endorsement. The obligations of endorsed sponsors related to eligibility determinations and enrollment are specifically set forth in section II.C.6. of the preamble to the interim final rule.

3. Transitional Assistance

Under MPDIMA, certain low-income Medicare beneficiaries enrolled in the Medicare drug discount card program are eligible to receive transitional assistance of up to $600 per year, which may be applied toward the cost of covered discount card drugs obtained under the program. Section 1860D–31(h)(1)(C) of the Act requires endorsed sponsors to administer the transitional assistance on behalf of CMS and to demonstrate to the Secretary that they have satisfactory arrangements to account for the transitional assistance provided to transitional assistance enrollees. These requirements are codified in 42 CFR 403.806(e).

4. Information and Outreach

Section 1860D–31(d)(2)(A) of the Act requires that each prescription drug card endorsed sponsor that offers an endorsed discount card program make available to beneficiaries eligible for the discount card program—through the internet and otherwise—information that the Secretary identifies as being necessary to promote informed choice among endorsed discount card programs, including information on enrollment fees and negotiated prices for covered discount card drugs. In addition, section 1860D–31(h)(7)(A) of the Act limits drug card endorsed sponsors to providing under their endorsements only products and services directly related to covered discount card drugs, or discounts on over-the-counter drugs; and section 1860D–31(h)(7)(B) prohibits endorsed sponsors from marketing, under their endorsements, any products and services other than those described in section 1860D–31(h)(7)(A). The requirements for information to be included in materials are contained in the CMS regulations at 42 CFR 403.806(g).

III. Civil Money Penalties Under Public Law 108–173

Section 1860D–31(i)(3) of the Act authorizes the imposition of CMPs against endorsed sponsors that knowingly engage in conduct that violates the requirements of section 1860D–31 of the Act or engage in false or misleading marketing practices. Section 403.820(b) of the CMS regulations interpreted this to mean that those endorsed sponsors that knowingly engage in conduct that violates the conditions of their endorsement agreement with the Department or that constitutes false or misleading marketing practices may be subject to CMPs.

The Department has divided the sanction authority between CMS and the OIG. Where CMP authority is shared between CMS and the OIG, the Department has assigned sanction authority to the OIG for those violations that concern *misleading or defrauding* a beneficiary. The Department also assigned sanction authority to the OIG for misuse of transitional assistance funds.[3] On the other hand, CMS has the authority to impose CMPs in those instances where the endorsed sponsor's conduct constitutes *non-compliance with an operational requirement* not directly related to beneficiary protection. (Section 403.802(b)(2) of the CMS regulations sets forth a full listing of the CMS CMP authorities related to MPDIMA.)

As a result, in accordance with CMS's Medicare prescription drug discount card implementing regulations (68 FR 69787; December 15, 2003), in addition to or in place of sanctions that CMS may impose, as set forth in 42 CFR 403.820(a), the OIG has been authorized to impose CMPs against an endorsed

[1] Eligible beneficiaries may enroll in the Medicare drug discount card program beginning no later than 6 months after the date of enactment of MPDIMA and ending December 31, 2005. After December 31, 2005, beneficiaries enrolled in the program may continue to use their drug discount card during a short transition period beginning January 1, 2006 and ending upon the effective date of a beneficiary's outpatient drug coverage under Medicare Part D, but no later than the last day of the initial open enrollment period under Part D.

[2] Section 902 of MPDIMA has established timelines for the publication of the Medicare rules under section 1871(a) of the Act. This provision requires CMS to publish a final rule within 3 years of the publication of the interim final rule.

[3] Technical assistance, as defined in § 403.802 of the CMS regulations, refers to the subsidy funds that transitional enrollees may apply toward the cost of covered discount card drugs in the manner described in § 403.808(d).

sponsor whom it determines knowingly (as defined in 42 CFR 1003.102(e)):

- Misrepresented or falsified information in outreach material or comparable material provided to a program enrollee or other person;
- Charged a program enrollee in violation of the terms of the endorsement contract; or
- Used transitional assistance funds in any manner that is inconsistent with the purpose of the transitional assistance program.

The OIG may impose CMPs of no more than $10,000 for each of these violations. A violation is deemed to occur in each instance when an endorsed sponsor (1) provides misleading information to a program enrollee or other person; (2) overcharges a program enrollee; or (3) misuses the transitional assistance funds of a program enrollee. Appeal rights will be afforded in accordance with the appeal procedures set forth in 42 CFR parts 1003 and 1005.

IV. Provisions of This Final Rule

To address these new OIG civil money penalty authorities, we are amending 42 CFR part 1003 as follows:

- In § 1003.100, Basis and purpose, we are revising paragraphs (a) and (b) to state the broad purpose of these new CMP authorities.
- In § 1003.101, Definitions, we are adding a definition for the term ''transitional assistance,'' consistent with the definition in 42 CFR 403.802.
- In § 1003.102, Basis for CMPs and assessments, we are adding new paragraphs (b)(17), (b)(18) and (b)(19) to cross-reference the implementing CMS regulations and the OIG's authority to impose penalties for violations.
- In § 1003.103, Amount of penalty, we are adding a new paragraph (k) to address the $10,000 maximum penalty amounts for each of these violations.

The OIG specifically seeks public comments on the possible inclusion of specific mitigating and aggravating factors to be considered in determining penalty amounts.

We note that in addition to the CMPs set forth above, a card sponsor's misuse of the Medicare name or emblem may subject them to CMPs in accordance with 42 U.S.C. 1320b–10 and the OIG regulations at § 1003.102(b)(7), which prohibit the misuse of the Medicare name and emblem. In general, in accordance with the statute and the implementing regulations, the OIG may impose penalties on any person who misuses the term ''Medicare,'' or other names associated with DHHS in any item constituting a communication in a manner which the person knows or should know gives the false impression that the item is approved, endorsed, or authorized by the Department. Violators are subject to fines of up to $5,000 per violation or, in the case of a broadcast or telecast violation, $25,000.

V. Regulatory Impact Statement

A. Regulatory Analysis

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any given year). This is not a major rule as defined at 5 U.S.C. 804(2), and it is not economically significant since it would not have a significant effect on program expenditures and there would be no additional substantive cost to implement the resulting provisions. The OIG has significant experience in enforcing CMPs for a wide variety of violations and fraudulent conduct. Over the past three fiscal years (FYs), total CMPs levied by the OIG for various violations and fraudulent conduct has averaged about $2.2 million annually ($1.1 million in FY 2001; $2.4 million in FY 2002; and $3.1 million in FY 2003). In addition, the revisions to 42 CFR part 1003 set forth in this rule are designed to further clarify statutory requirements, and hence the economic effect of these regulatory provisions should impact only those limited few endorsed sponsors that would perhaps engage in prohibited behavior in violation of the statute. Given the OIG's enforcement history and the nature of the entities subject to CMPs, we do not believe that these regulations will result in a significant economic impact or have an appreciable effect on the economy or on Federal or State expenditures.

2. Regulatory Flexibility Act

The RFA, and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most providers are considered to be small entities by having revenues of $6 million to $29 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered to be small entities. In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural providers. This analysis must conform to the provisions of section 604 of the RFA.

Because of the requirements to be an endorsed sponsor, we anticipate that few, if any, endorsed sponsors will be small entities and none will be rural providers. However, even if some sponsored entities are small entities, we believe that the aggregate economic impact of this rulemaking is minimal since it is the nature of the conduct and not the size or type of the entity that would result in a violation of the statute and the regulations. As a result, we have concluded that this rulemaking rule should not have a significant impact on the operations of a substantial number of small or rural providers, and that a regulatory flexibility analysis is not required for this rulemaking.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As indicated, these proposed revisions comport with congressional and statutory intent and clarify the Department's legal authorities against those who defraud or otherwise act improperly against the Federal and State health care programs. As a result, we believe that there are no significant expenditures required by these revisions that would impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $110 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

4. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or

otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of State or local governments.

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with Executive Order 12866.

B. Paperwork Reduction Act

The provisions of this rulemaking impose no express new reporting or recordkeeping requirements on health care providers or endorsed sponsors.

VI. Response to Public Comments

Comments will be available for public inspection beginning on June 2, 2004, in Room 5518 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday and through Friday of each week from 8 a.m. to 4 p.m., (202) 619–0089. Because of the large number of comments we normally receive on regulations, we cannot acknowledge or respond to comments individually. However, we will consider all timely and appropriate comments when developing any revised final rulemaking.

VII. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and provide a period for public comment before we publish a final rule. We may waive this procedure, however, for good cause if we find that the notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and if we incorporate a statement of this finding and its reasons in the rule issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because we believe that it is in the public interest to comply with the statutory requirement in section 1860D–31(a)(2)(B) of the Act, which authorizes interim final rules for implementing the prescription drug discount card program. The statute is clear on the penalty provisions and affords the OIG little discretion, and does not make or change substantive policy, but merely sets forth the statutorily specified penalty provisions in the OIG enforcement regulations. Therefore, in accordance with MPDIMA and the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)), for good cause, we waive notice and comment procedures.

This rulemaking provides for a 60-day public comment period.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties, Social security.

■ Accordingly, 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

■ 1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 262a, 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395w–141(i)(3), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).

■ 2. Section 1003.100 is amended by revising paragraph (a); republishing the introductory text for paragraphs (b) and (b)(1); revising paragraphs (b)(1)(xv) and (b)(1)(xvi); and by adding a new paragraph (b)(1)(xvii) to read as follows:

§ 1003.100 Basis and purpose.

(a) Basis. This part implements sections 1128(c), 1128A, 1140, 1860D–31(i)(3), 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act; sections 421(c) and 427(b)(2) of Pub. L. 99–660; and section 201(i) of Pub. L. 107–188 (42 U.S.C. 1320–7(c), 1320a–7a, 1320b–10, 1395w–141(i)(3), 1395dd(d)(1), 1395mm, 1395ss(d), 1396b(m), 11131(c), 11137(b)(2) and 262).

(b) Purpose. This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(xv) Violate the Federal health care programs' anti-kickback statute as set forth in section 1128B of the Act;

(xvi) Violate the provisions of part 73 of this title, implementing section 351A(b) and (c) of the Public Health Service Act, with respect to the possession and use within the United States, receipt from outside the United States, and transfer within the United States, of select agents and toxins in use, or transfer of listed biological agents and toxins; or

(xvii) Violate the provisions of part 403, subpart H of this title, implementing the Medicare prescription drug discount card and transitional assistance program, by misleading or defrauding program beneficiaries, by overcharging a discount program enrollee, or by misusing transitional assistance funds.

* * * * *

■ 3. Section 1003.101 is amended by republishing the introductory text and by adding, in alphabetical order, a definition for the term ''transitional assistance'' to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Transitional assistance means the subsidy funds that Medicare beneficiaries enrolled in the prescription drug discount card and transitional assistance program may apply toward the cost of covered discount card drugs in the manner described in § 403.808(d) of this title.

■ 4. Section 1003.102 is amended by republishing the introductory text for paragraph (b); and by adding new paragraphs (b)(17), (b)(18), and (b)(19) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty and, where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(17) Is an endorsed sponsor under the Medicare prescription drug discount card program who knowingly misrepresented or falsified information in outreach material or comparable material provided to a program enrollee or other person.

(18) Is an endorsed sponsor under the Medicare prescription drug discount card program who knowingly charged a program enrollee in violation of the terms of the endorsement contract.

(19) Is an endorsed sponsor under the Medicare prescription drug discount card program who knowingly used transitional assistance funds of any program enrollee in any manner that is inconsistent with the purpose of the transitional assistance program.

■ 5. Section 1003.103 is amended by adding a new paragraph (m) to read as follows:

* * * * *

§ 1003.103 Amount of penalty.

* * * * *

(m) For violations of section 1860D–31 of the Act and 42 CFR part 403, subpart H, regarding the misleading or defrauding of program beneficiaries, or the misuse of transitional assistance funds, the OIG may impose a penalty of not more than $10,000 for each individual violation.

Dated: February 17, 2004.

Dara Corrigan,

Acting Principal Deputy Inspector General.

Approved: March 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–11191 Filed 5–18–04; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 380 and 391

[Docket FMCSA–97–2176]

RIN 2126–AA08

Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements; Correction

AGENCY: Federal Motor Carrier Safety Administration, (FMCSA); DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Motor Carrier Safety Administration published in the **Federal Register** of March 30, 2004, a final rule concerning requirements for operators of LCVs and the instructors who train them. The requirements codified at § 391.53 should have been designated § 391.55. In addition, the authority citation for the rule failed to include the authorities listed in another FMCSA rule amending part 391 that was published the same day. This document corrects these errors. Also, under the **SUPPLEMENTARY INFORMATION** section, we discuss an error in the preamble of the March 30 rule which does not require a correction to the regulatory text.

DATES: Effective on June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–9579, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FMCSA published two documents in the **Federal Register** of March 30, 2004, both of which mistakenly added a new § 391.53 with different section headings and contents. The *Safety Performance History of New Drivers* final rule (69 FR 16684) added § 391.53 Driver Investigation History File. The final rule on *Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements* (69 FR 16722) added § 391.53 LCV Driver-Instructor qualification files. This correction changes the designation of the ''LCV Driver-Instructor qualification files'' from § 391.53 to § 391.55. This amendment is being adopted to avoid codifying two different provisions under the same section number. FMCSA also revises the authority citation to reflect the statutory authority for changes to 49 CFR part 391 resulting from the *Safety Performance History of New Drivers* final rule. Because the content of the re-designated section is unchanged, and the authority citation has no effect on the public, FMCSA has determined pursuant to 5 U.S.C. 553(b)(B) and (d)(3) that prior notice and opportunity for comment on these amendments are unnecessary and that good cause exists to make the amendments effective upon publication in the **Federal Register**.

The discussion of CDL endorsements under § 383.93(b), which occurs in the preamble of the March 30 final rule, includes obsolete information about the hazardous materials endorsement and omits the school bus endorsement. The agency revised § 383.93(b) in an interim final rule titled *Limitations on the Issuance of a Commercial Driver's Licenses with a Hazardous Materials Endorsement* (68 FR 23844, May 5, 2003). Formerly, only a driver who operated a vehicle hauling a placardable amount of hazardous materials must obtain a hazardous materials endorsement. The May 5 final rule additionally requires drivers that transport select agents and toxins to obtain a hazardous materials endorsement and made a conforming amendment to § 393.93(b)(4) to cross-reference the broadened hazardous materials definition. In the March 30 document, on page 16723, in the first column, the first full paragraph reads:

> In accordance with the CMVSA, all drivers of commercial motor vehicles must possess a valid CDL in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, all persons who operate or expect to operate any of the following vehicles, which have special handling characteristics, must obtain endorsements under 49 CFR 383.93(b):
> (a) Double/triple trailers;
> (b) Passenger vehicles;
> (c) Tank vehicles;
> (d) Vehicles required to be placarded for hazardous materials.

The correct information is as follows:

> In accordance with the CMVSA, all drivers of commercial motor vehicles must possess a valid CDL in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, 49 CFR 383.93(b) requires an operator to obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:
> (1) Double/triple trailers;
> (2) Passenger vehicles;
> (3) Tank vehicles;
> (4) Used to transport hazardous materials as defined in § 383.5, or
> (5) School buses.

The information on those endorsements for which a driver must pass a skills test excludes the school bus endorsement. On page 16723, in the first column, in paragraph 2, in the second full paragraph, the second sentence reads:

> To obtain a passenger endorsement, the driver also must pass a skills test.

It should read:

> To obtain a passenger or school bus endorsement, the driver also must pass a skills test.

These preamble errors do not require a correction to the regulatory text.

Correction

In rule FR Doc. 04–6794 published on March 30, 2004, (69 FR 16722) make the following corrections:

1. On page 16727, in the third column, in paragraph 3, in the seventh line, ''391.53'' is corrected to read ''391.55''.

PART 391—[CORRECTED]

■ 2. On page 16738, in the third column, in paragraph 1, the authority citation for part 391 is corrected to read:

''Authority: 49 U.S.C. 322, 504, 508, 31133, 31136 and 31502; Sec. 4007(b) of Pub. L. 102–240 (105 Stat. 2152); Sec. 114, Pub. L. 103–311 (108 Stat. 1673, 1677); and 49 CFR 1.73''.

■ 3. On page 16738, in the third column, in amendatory instruction 3, in the third line, ''§ 391.53'' is corrected to read ''§ 391.55''.

§ 391.53 [Corrected]

■ 4. On page 16738, in the third column, in the section heading, ''§ 391.53'' is corrected to read ''§ 391.55''.

Dated: May 13, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–11306 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Stikine River

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board's action in the Stikine River to provide for a subsistence harvest opportunity. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 3, 2004. Those regulations established seasons, harvest limits, and methods relating to the taking of fish and shellfish for subsistence uses during the 2004 regulatory year.

DATES: The action for the Stikine River sockeye fishery described in this document is effective July 1, 2004, through July 31, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50 Part 100 and Title 36 Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 fishing seasons, harvest limits, and methods and means were published on February 3, 2004 (69 FR 5018). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

This action is necessary to provide opportunity for subsistence harvest in the Stikine River. This action is authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Stikine River

In December 2003, the Board adopted regulatory proposals establishing a new Federal subsistence sockeye fishery in the Stikine River. This fishery is open to Federally qualified users having customary and traditional use of salmon. Notification of and implementation of this action were delayed pending coordination with the Pacific Salmon Commission.

The following stipulations will apply to this new fishery:

In the mainstem of the Stikine River:

(A) You may take sockeye salmon under the authority of a Federal subsistence fishing permit issued by the USDA Forest Service for the Stikine River. Each Stikine River permit will be issued to a household and will be valid for 15 days. Permits may be revalidated for additional 15-day periods.

(B) The total annual guideline harvest level for the Stikine River fishery is 600 sockeye salmon.

(C) You may take sockeye salmon from July 1 through July 31. The annual limit is 40 sockeye salmon per household. Only dipnets, spears, gaffs, rod and reel, beach seine, or gillnet not exceeding 15 fathoms in length with mesh size no larger than 5½ inches may be used.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could adversely impact subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d)(3) to make this action effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The

final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276).

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV, with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

The action has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that the action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the action has no potential private property takings implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the action will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the action meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: April 30, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: April 29, 2004.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 04–11281 Filed 5–18–04; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

Proposed Rules

Federal Register
Vol. 69, No. 97
Wednesday, May 19, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 61, 70, 72, and 76

[Docket No. PRM–30–62]

Union of Concerned Scientists; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–30–62) submitted by the Union of Concerned Scientists (UCS). The petition requested that the NRC amend its employee protection regulations to require licensees to provide training to their management to make certain that their management is aware of its obligations under these regulations. Subsequent to submission of PRM–30–62, an event occurred which altered the processing for disposition of the Petition. On August 3, 2000, the Commission announced in the **Federal Register** the formation of a Discrimination Task Group (DTG) to evaluate NRC's processes used for handling discrimination allegations and violations of employee protection standards. A Senior Management Review Team (SMRT) was established to review the final recommendations of the DTG. Because the nature and concerns of PRM–30–62 fell within the objectives of the DTG charter, the NRC, with the petitioner agreeing, decided to incorporate consideration of the issues raised in the petition into the activities of the DTG. The NRC is denying the petition for rulemaking because it has determined that instead of promulgating new rules, the best approach to achieve the intent of the petition is through enhancement of the enforcement policy to encourage training, along with development of regulatory guidance and communicating this guidance to licensee management and to its employees.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter of denial to the petitioner may be examined, and copied for a fee at the NRC Public Document Room, Room O1F23, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: James R. Firth, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–6628, e-mail *jrf2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

The petition, assigned Docket No. PRM–30–62, was filed with the NRC by the Union of Concerned Scientists (UCS) on August 13, 1999. Notice of receipt of the petition and request for public comment was published in the **Federal Register** on October 27, 1999 (64 FR 57785). The petitioner requested that the NRC amend its employee protection regulations to require licensees to provide training to their management (*i.e.,* first line supervisors, managers, directors, and officers) to make certain they are aware of their obligations under these regulations, and that individual managers be held accountable for their actions under the deliberate misconduct regulations (*e.g.,* 10 CFR 50.5). The petitioner believes that this would prevent licensee management from using ''ignorance of the law'' as an excuse for violating employee protection regulations and allow the NRC to take enforcement action against individual managers for such violations.

Presently, the Commission's regulations prohibiting discrimination against employees are found at 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, 72.10, and 76.7. These regulations provide notice that discrimination against an employee for engaging in protected activities as defined in Section 211 of the Energy Reorganization Act (ERA) is prohibited; and that civil penalties and other enforcement action may be taken against licensees for violations of these regulations by licensees or by their contractors or subcontractors. The petition noted that between March 1996 and August 1999, the NRC took escalated enforcement action 111 times against individuals. Within this period, the NRC took 23 enforcement actions against licensees for discriminating against nuclear workers who raised safety concerns. The petition states that despite identifying ''who'' in these 23 cases was responsible for violating the Federal regulations, the NRC took enforcement action against individuals on only four occasions.

In 1991, the Commission promulgated its deliberate misconduct regulations (*e.g.,* 10 CFR 50.5), (hereafter Deliberate Misconduct Rule). Pursuant to the Deliberate Misconduct Rule, the Commission may take enforcement action directly against individual employees of licensees, or applicants and contractors or subcontractors of licensees and applicants, who engage in deliberate misconduct that causes a licensee or applicant to be in violation of the Commission's regulations, including those prohibiting discrimination. The petitioner asserts, however, that in the past the NRC has failed to use the authority afforded by the Deliberate Misconduct Rule to take enforcement action against managers who have discriminated against employees raising safety concerns, because these individuals claimed that they were not aware of the provisions of the employee discrimination regulations. The petitioner therefore requests that licensees be required to provide training to their management on these regulations, so that managers will not be able to claim that they were unaware of these regulations, and so that enforcement action may thus be taken directly against managers who violate these regulations pursuant to the Deliberate Misconduct Rule.

Public Comments on the Petition

On October 27, 1999, the NRC published a notice of receipt of a petition for rulemaking (64 FR 57785), filed by UCS on August 13, 1999, inviting interested persons to submit comments. The comment period closed on January 10, 2000. The NRC received 153 comment letters that included comments from several utilities, a professional association, a quasi-government agency, several universities, a number of private companies, a law firm, and numerous public citizens. The majority of the comment letters received, 146, favoring the petition voiced the same opinions as those provided in an ''action alert'' from the UCS to its subscribers asking them to contact the NRC to support the petition. Support for the petition focused on two concerns: First, the asserted inadequacy of NRC's regulations to protect nuclear plant workers who raise safety issues from discrimination or retaliation; and second, the failure of the NRC to enforce its employee protection regulations based on the rationale that individuals who discriminate against whistleblowers are not aware that their actions are illegal.

There were seven comment letters opposed to the petition. Reasons for opposition to the petition included:

(1) One commenter believed the petition is inconsistent with NRC policy, which does not include promulgation of a training requirement for each substantive regulation with which licensees must comply; and therefore, training should not be the subject of Federal regulation. It was noted that licensees already offer voluntary employee training to their managers on a wide range of regulatory issues (including employee protection) to maintain a Safety Conscious Work Environment (SCWE). Therefore, contrary to the petition, the commenter asserted that licensees already train their management in an effort to provide individual managers with a basic understanding of the laws prohibiting discrimination, including offering practical ways to address employee concerns. With respect to the content and type of training needed to respond to the petition, several commenters felt licensees need flexibility to identify the scope and substance of the training in order to fit the needs of employees at their individual facilities.

(2) One commenter believed the petition failed to provide adequate justification to support the requested agency action because it failed to explain, among other things, why existing mechanisms to ensure compliance with the employee protection regulations, such as in 10 CFR 50.7, including enforcement actions against licensees, are not sufficient to deter discriminatory behavior or encourage corrective action. In this regard, it was noted that an explicit requirement for training will not necessarily guarantee compliance with employee protection requirements or increase individual accountability because, in most cases, it is difficult to prove that adverse actions taken by licensee management were deliberate. To the commenter, the petitioner's inference that every employee protection violation necessarily includes a finding of deliberate misconduct against individuals as defined for example in 10 CFR 50.5 is overstated. The commenter believes that many cases involving alleged violations of the employee protection regulations result from good faith attempts by individual licensee managers to deal with difficult situations and not from deliberate attempts to discriminate against nuclear workers. The petitioner's assertion that there are frequent violations of the employee protection regulations was not supported by the facts provided in the petition in the commenter's view. However, the commenter noted that assuming the petitioner was correct, the fact there were 23 enforcement actions against licensees for violations of, in this case, 10 CFR 50.7 requirements over a 3 year period from March 1996 through August 1999 (less than 8 violations per year) does not demonstrate a widespread and pervasive industry problem that warrants a rule requiring employee protection training. Such a solution for issues involving human interactions and personalities will not solve all perceived problems of discrimination, and arguing that formal training will overcome this dilemma is simplistic.

(3) One commenter noted the petition appears designed only to encourage additional punitive action against individuals by the NRC when discrimination findings are made. However, the commenter asserted that it was noted in the past (with no specific reference to where or when) that, in most cases, enforcement actions citing discrimination typically are based on circumstantial evidence and are often difficult to prove.

(4) Several commenters noted that Section 211 of the ERA and the employee protection regulations such as in 10 CFR 50.7, Employee Protection, already set out the requirements that licensees and their contractors must meet to ensure that employees are free to raise safety concerns without fear of retaliation.

Intervening Actions

Subsequent to receipt of the petition, an event occurred which altered the processing and schedule for disposition of PRM–30–62. On April 14, 2000, the NRC approved the establishment of a working group to evaluate the NRC processes for handling discrimination cases. The purpose of the working group was to: (1) Evaluate the NRC's handling of matters covered by its employee protection regulations; (2) propose recommendations for improvement of the NRC's process for handling such matters; (3) ensure that the application of the NRC enforcement process was consistent with the objective of promoting an environment where workers are free to raise safety concerns in accordance with the NRC's employee protection standards; and (4) promote active and frequent involvement of internal and external stakeholders in the development of recommendations for future changes to the process. On August 3, 2000, a notice was published in the **Federal Register** (65 FR 47806) announcing the formation of an NRC Discrimination Task Group (DTG) to evaluate the NRC processes used in the handling of discrimination allegations and violations of the employee protection regulations. The DTG's objective was to propose recommendations for revisions to the regulatory requirements, the enforcement policy, or other agency guidelines as appropriate. A Senior Management Review Team (SMRT) was established to review the final recommendations of the DTG. Because the nature and concerns of PRM–30–62 fell within the objectives of the DTG charter, the NRC, with the petitioner agreeing, decided to incorporate consideration of the issues raised in the petition into the activities of the DTG.

The DTG submitted a report to the Commission with its findings and recommendations on December 12, 2002. The report was provided as an attachment to a paper sent to the Commission, SECY–02–0166, and was entitled, ''Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues.''

On March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM) on SECY–02–0166 approving the recommendations of the DTG, as revised by the SMRT and subject to the specific comments provided in the SRM. The SRM also stated that proposed guidance to licensees should be developed and

should emphasize training of licensee management as to its obligations under the employee protection regulations and provide information as to the recommended content of such training. Although the NRC believes the current employee protection regulations are adequate, clear, and sufficiently flexible to accommodate the concerns in PRM–30–62, the Commission believes that such guidance would further the NRC policy statement related to an SCWE.

The DTG concluded that the petition would not correct the problem that was the basis for the petition. The fact that a licensee manager may have received training on the discrimination regulations does not constitute enough evidence to conclude that an adverse action taken was deliberate. Consistent with the Commission's direction in the SRM of March 26, 2003, regulatory guidance will be developed and made available for licensees' use that will consider those attributes that constitute an effective SCWE program. Developing such guidance is consistent with NRC's performance-based approach, which allows licensees flexibility to develop programs that are best suited for them.

Reasons for Denial

The NRC is denying the petition for the following reasons:

1. As discussed above, on March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM) on SECY–02–0166 approving the recommendations of the DTG, as revised by the SMRT and subject to the specific comments provided in the SRM. The SRM also stated that proposed guidance to licensees should be developed and should emphasize training of licensee management as to its obligations under the employee protection regulations and provide information as to the recommended content of such training. Although the NRC believes the current employee protection regulations are adequate, clear, and sufficiently flexible to accommodate the concerns in PRM–30–62, the Commission believes that such guidance would further the NRC policy statement related to an SCWE.

2. The NRC has concluded that the petition would not correct the problem that was the basis for the petition. The fact that a licensee manager may have received training on the discrimination regulations does not constitute enough evidence to conclude that an adverse action taken was deliberate. Consistent with the Commission's direction in the SRM of March 26, 2003, regulatory guidance will be developed and made available for licensees' use that will consider those attributes that constitute an effective SCWE program. Developing such guidance is consistent with NRC's performance-based approach, which also allows licensees flexibility to develop programs that are best suited for them.

In sum, no new information has been provided by the petitioner that supports the need to undertake rulemaking action to amend the requirements of the employee protection regulations. The goals of the petition can be achieved through the development of regulatory guidance in conjunction with licensees and stakeholders and communicating this guidance to their managers and employees. Additional rulemaking would impose unnecessary regulatory burden on licensees and does not appear to be warranted for the adequate protection of the public health and safety and the common defense and security.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 29th day of April, 2004.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 04–11296 Filed 5–18–04; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1193]

Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) proposes to allow the continued inclusion of outstanding and prospective issuances of trust preferred securities in the tier 1 capital of bank holding companies, subject to stricter quantitative limits and qualitative standards. The Board also proposes to revise the quantitative limits applied to the aggregate amount of cumulative perpetual preferred stock, trust preferred securities, and minority interests in the equity accounts of certain consolidated subsidiaries (collectively, restricted core capital elements) included in the tier 1 capital of bank holding companies. The quantitative limits would become effective after a three-year transition period. In addition, the Board is proposing to revise the qualitative standards for capital instruments included in regulatory capital consistent with longstanding Board policies. These revisions are being proposed to address supervisory concerns, competitive equity considerations, and changes in generally accepted accounting principles. The proposal would have the effect of strengthening the definition of regulatory capital for bank holding companies.

DATES: Comments must be received by no later than July 11, 2004.

ADDRESSES: You may submit comments, identified by Docket No. R–1193, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Norah Barger, Associate Director (202/452–2402 or *norah.barger@frb.gov*), Mary Frances Monroe, Manager (202/452–5231 or *mary.f.monroe@frb.gov*), John F. Connolly, Senior Supervisory Financial Analyst (202/452–3621 or *john.f.connolly@frb.gov*), Division of Banking Supervision and Regulation, or Mark E. Van Der Weide, Senior Counsel (202/452–2263 or *mark.vanderweide@frb.gov*), Legal Division. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

The Board's current risk-based capital guidelines, which are based on the 1988

Basel Accord, as well as the Board's leverage capital guidelines for bank holding companies (BHCs), allow BHCs to include in their tier 1 capital the following items that are defined as core (or tier 1) capital elements: common stockholders' equity; qualifying noncumulative perpetual preferred stock (including related surplus); qualifying cumulative perpetual preferred stock (including related surplus); and minority interest in the equity accounts of consolidated subsidiaries. Qualifying cumulative preferred stock is limited to 25 percent of the sum of core capital elements. Tier 1 capital generally is defined as the sum of core capital elements less any amounts of goodwill, other intangible assets, interest-only strips receivable, deferred tax assets, non-financial equity investments, and other items that are required to be deducted from a BHC's tier 1 capital for purposes of calculating regulatory capital ratios.

The Federal Reserve's capital guidelines allow minority interest in the equity accounts of consolidated subsidiaries to be included in a BHC's tier 1 capital because it represents capital support from third-party investors in a subsidiary owned by a BHC and consolidated on its balance sheet. Nonetheless, minority interest does not constitute equity on the BHC's consolidated balance sheet because typically minority interest is available to absorb losses only within the subsidiary that issues it and is not generally available to absorb losses in the broader consolidated banking organization. Although the Board's capital rules state that voting common stock generally should be the dominant form of tier 1 capital, minority interest is not subject to a specific numeric limit. Minority interest in the form of cumulative preferred stock, however, generally has been subject to the same limits as cumulative preferred stock issued directly by a BHC.

In 1996, the Board explicitly approved the inclusion in BHCs' tier 1 capital of minority interest in the form of trust preferred securities. Trust preferred securities are undated cumulative preferred securities issued out of a special purpose entity (SPE), usually in the form of a trust, in which a BHC owns all of the common securities. The trust preferred securities allow for at least twenty consecutive quarters of dividend deferral, after which the investors have the right to take hold of the sole asset in the trust, a deeply subordinated note issued by the BHC. The note, which is subordinated to all obligations of the BHC other than its common and preferred stock, has terms that generally mirror those of the trust preferred securities, except that the subordinated debt has a fixed maturity of at least 30 years. Trust preferred securities are considered tax-efficient because, for tax purposes, payments on the instrument are deductible from the issuer's income, unlike dividends on directly issued preferred stock, which must be paid from after-tax earnings. Because trust preferred securities are cumulative, they currently are limited, together with directly issued cumulative perpetual preferred stock and other minority interest in the form of cumulative preferred stock, to no more than 25 percent of a BHC's core capital elements.

The Board's decision to include trust preferred securities in tier 1 capital was based on a number of factors in addition to its qualification as minority interest under generally accepted accounting principles (GAAP). In terms of features, trust preferred securities have long lives that approach economic perpetuity and deferral rights that, at twenty consecutive quarters, approach economically indefinite deferral. With regard to loss absorbency, trust preferred securities, like other minority interest included in tier 1 capital, cannot deter technical insolvency because they are not represented as equity on the BHC's consolidated balance sheet. Unlike minority interest in the form of equity in a typical operating subsidiary, however, trust preferred securities are available to absorb losses more broadly in the consolidated banking organization. Its availability for this purpose stems from the fact that the sole asset of the issuing subsidiary is a note from the parent BHC, which constitutes a deeply subordinated claim on the consolidated BHC. Thus, if a BHC defers payments on trust preferred securities, the cash flow preserved can be used anywhere within the consolidated organization. Dividend deferrals on equity in the typical operating subsidiary, on the other hand, absorb losses and preserve cash flow only within the subsidiary; the cash that is freed up cannot be used elsewhere in the consolidated organization.

The Board also considered competitive equity factors in making its decision to include trust preferred securities in tier 1 capital. A number of non-BHC companies, including domestic and non-domestic financial institutions, had issued trust preferred securities or similar tax-efficient instruments. Thus, these companies were able to enjoy a lower after-tax cost of capital than BHCs that compete in some of the same markets. Since 1996, approximately 820 BHCs have issued over $77 billion of trust preferred securities, the popularity of which stems in large part from its tax-efficiency.

Trust preferred securities are not the only tax-efficient source of tier 1 capital, although BHCs tend to favor them because they are relatively simple, standard, and well-understood instruments that are also issued by non-banking corporations. One alternative tax-efficient instrument that is included in the tier 1 capital of banks and BHCs as minority interest in the form of perpetual preferred securities is referred to as real estate investment trust (REIT) preferred securities. These securities, which usually are noncumulative, are issued by an SPE that qualifies as a REIT for tax purposes. Proceeds from the issuance of the REIT's common securities, which are wholly owned by the sponsoring banking organization, and preferred securities, which are owned by third-party investors, are used to buy real estate-related assets. Because the source of the assets typically is a subsidiary bank of the sponsoring banking organization, REIT preferred securities are usually issued by an SPE that is a subsidiary of the bank, rather than of the BHC. Statutorily, dividends on REIT preferred securities may be deducted from the taxable income of the banking organization if the assets are related to real estate and certain other criteria are met, including the distribution of 95 percent of the REIT's income in dividends to investors. A key prudential condition for REIT preferred securities to be included in tier 1 capital is that they must have an exchange feature providing for an exchange of the securities for an equal amount of directly-issued perpetual preferred securities of the sponsoring bank with identical terms upon the occurrence of certain events, including the event that the sponsoring bank becomes undercapitalized or insolvent. This feature is necessary for regulatory capital inclusion of the REIT preferred securities because they are effectively secured by the assets of the SPE, which often are high quality and very liquid. The Federal Reserve, together with the other Federal banking agencies, limits the inclusion of REIT preferred securities to 25 percent of the sum of a banking organization's core capital elements.

A few banking organizations have used other asset-driven structures that are similar to REIT preferred securities to issue tier 1 preferred securities that are included in minority interest and are subject to the same exchange provision as REIT preferred securities. Asset-

driven structures can be highly tailored to suit investors' needs and the preferred securities issued out of them are often privately placed. However, the amount of preferred securities issued out of REITs and similar asset-driven structures is relatively small. BHCs generally favor issuing trust preferred securities instead of preferred securities issued out of asset-driven structures because trust preferred securities do not tie up liquid assets, are easier and more cost-efficient to issue and manage, and are more transparent and better understood by the market. Also, banking organizations generally prefer to issue non-asset-backed preferred securities at the holding company level to give them maximum flexibility in the use of the proceeds of such issuances, a flexibility that is not available for asset-backed instruments issued at the bank level. From a supervisory perspective, asset-driven structures raise concerns because they trap high quality, liquid assets in a subsidiary that the banking organization would have difficulty accessing to meet immediate liquidity needs.

Factors in the Reconsideration of the Treatment of Trust Preferred Securities

Overall, the supervisory experience with trust preferred securities has been positive. The instrument has performed much as expected in troubled banking organizations; in numerous instances, BHCs in deteriorating financial condition have deferred dividends on trust preferred securities to preserve cash flow. In addition, trust preferred securities have proven to be a useful source of capital funding for BHCs, which often downstream the proceeds in the form of common stock to subsidiary banks, thereby strengthening the banks' capital bases. For example, in the months following the events of September 11, 2001, a period when issuance of most other capital instruments was extremely difficult, BHCs were able to execute large issuances of trust preferred securities to retail investors, demonstrating the financial flexibility offered by this instrument.

Around 2000, the first securities backed by a pool of trust preferred securities from multiple issuers came to the market. Pooling arrangements, which have become increasingly popular and typically involve thirty or so separate issuers, have made the issuance of trust preferred securities possible for even very small BHCs, most of which had not previously enjoyed capital market access for tier 1 instruments. Although this development has helped level the competitive playing field between small and large banking organizations with regard to capital funding sources, it also has given rise to concerns. Evidence supports the view that, in some instances, BHCs that participate in poolings have over-relied on trust preferred securities within their capital structures. As a result, for some time the Federal Reserve has been considering ways to limit undue reliance on these instruments.

Excessive reliance generally has not been a concern at large banking organizations because they are subject to much more rigorous market discipline, which works to limit the amount of trust preferred securities a BHC may issue. Moreover, a 1998 agreement among the G–10 banking supervisors that participate in deliberations of the Basel Committee on Banking Supervision called for the Federal Reserve's best efforts to limit the issuance by internationally active banking organizations of innovative instruments'a category that would include trust preferred securities'to 15 percent of their tier 1 capital. Although the Federal Reserve has informally encouraged BHCs to comply with this standard, the Federal Reserve's commitment to the standard has not been formalized.

As the Federal Reserve was working through various issues related to trust preferred securities and alternative tax-efficient instruments, the accounting treatment of trust preferred securities was revised, adding yet another factor to be taken into account in the reconsideration of the regulatory capital treatment of these instruments. In January 2003, the Financial Accounting Standards Board (FASB) issued Interpretation No. 46, *Consolidation of Variable Interest Entities* (FIN 46). Since then the accounting industry and BHCs have wrestled with the application of FIN 46 to the consolidation by BHC sponsors of trusts issuing trust preferred securities. In late December 2003, when FASB issued a revised version of FIN 46 (FIN 46R), the accounting authorities generally concluded that such trusts must be deconsolidated in financial statements under GAAP. The result is that, under GAAP, trust preferred securities generally continue to be accounted for as equity at the level of the trust that issues them, but the instruments may no longer be treated as minority interest in the equity accounts of a consolidated subsidiary on a BHC's consolidated balance sheet. Instead, upon adopting FIN 46 and FIN 46R, a BHC no longer may reflect on its balance sheet the trust preferred securities issued out of the SPE, but rather must reflect the deeply subordinated note the BHC issued to the deconsolidated SPE.

Consistent with longstanding Board direction, BHCs are required to follow GAAP for regulatory reporting purposes. Thus, BHCs should, for both accounting and regulatory reporting purposes, determine the appropriate application of GAAP (including FIN 46 and FIN 46R) to their trusts issuing trust preferred securities. Accordingly, there should be no substantive difference in the treatment of such trusts for purposes of regulatory reporting and GAAP accounting.

The change in the GAAP accounting of a capital instrument does not necessarily change the regulatory capital treatment of that instrument. Although GAAP informs the definition of regulatory capital, the Federal Reserve is not bound by GAAP accounting in its definition of tier 1 or tier 2 capital because these are regulatory constructs designed to ensure the safety and soundness of banking organizations, not accounting designations designed to ensure the transparency of financial statements. The current definition of tier 1 capital differs from GAAP equity in a number of ways that the Federal Reserve has determined are consistent with its responsibility for ensuring the soundness of the capital bases of banking organizations under its supervision. These differences do not constitute differences between regulatory reporting and GAAP accounting requirements, but rather are differences only between GAAP equity and the concept of tier 1 capital as used in the Board's regulatory capital requirements for banking organizations.

Proposed Regulatory Capital Treatment of Trust Preferred Securities

In proposing a revised capital treatment of trust preferred securities, the Board has taken into account a number of factors. In addition to its supervisory experience and the revised accounting treatment, the Board has considered domestic and international competitive equity issues and supervisory concerns with alternative tax-efficient instruments. In balancing all these considerations, the Board has decided to propose permitting BHCs to continue to include outstanding and prospective issuances of trust preferred securities in their tier 1 capital, subject to stricter quantitative limits, which would apply to a broader range of capital instruments issued by BHCs.

In the Board's view, experience with trust preferred securities has demonstrated that they can play a useful role in providing financial support to banking organizations in deteriorating

financial condition. Although the consolidated accounting treatment for trust preferred securities, which continue to be accounted for as equity at the issuing entity level, has been revised, neither the instrument nor any of its features have changed since 1996 when the Board decided that the securities could be included in tier 1 capital. From a competitive equity point of view, poolings of trust preferred securities have permitted small BHCs for the first time to access the capital markets for tier 1 capital, which larger BHCs have long enjoyed. No alternative tier 1 structure to trust preferred securities has emerged that can be similarly pooled and issued to the capital markets by small banking organizations. With regard to large BHCs, the Board is aware that their foreign competitors have issued as much as $125 billion of similar tax-efficient tier 1 capital instruments and that preventing the use of a standard tax-efficient capital instrument by U.S. BHCs could place them at a competitive disadvantage.

In reviewing existing alternative tax-efficient tier 1 capital instruments available to BHCs, the Board has concluded that in several ways trust preferred securities are a superior instrument to these alternatives. In this regard, trust preferred securities are available to absorb losses throughout the BHC and do not affect the BHC's liquidity position. Trust preferred securities are relatively simple, standardized, and well-understood instruments that are widely issued by both corporate and banking organizations. Moreover, issuance of trust preferred securities tends to be broad and transparent and, thus, easy for the market to track. In the Board's view, these reasons support maintaining trust preferred securities as a component of tier 1 capital within limits that should likewise be applied to other capital instruments that do not provide the same level of capital support as common equity and noncumulative perpetual preferred stock.

Accordingly, in formulating quantitative limits for trust preferred securities, the Board has decided to apply them to a range of other instruments. Since 1989, cumulative perpetual preferred stock has been limited to 25 percent of the sum of core capital elements. In 1996, trust preferred was grouped together with other cumulative preferred stock for the purpose of the 25 percent limit. The Board is proposing to continue subjecting cumulative perpetual preferred stock and trust preferred securities to a common limit, while requiring other capital elements in the form of minority interest in the equity accounts of consolidated subsidiaries to be subject to that same limit. In this regard, the Board is proposing to distinguish among three types of qualifying minority interest. The aim of making this distinction is to allow common and preferred equity instruments issued directly by a consolidated U.S. depository institution or foreign bank subsidiary of a BHC to receive a treatment parallel to similar instruments issued directly by a BHC, while placing additional restrictions on minority interest in the equity accounts of other subsidiaries, whether the subsidiary is at the bank or the BHC level.

Thus, the Board is proposing that minority interest related to qualifying common or noncumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary (Class A minority interest) would not be subject to formal limitation within tier 1 capital. Under the proposal, minority interest related to qualifying cumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary (Class B minority interest) would be a restricted core capital element subject to limitation within tier 1 capital, but not subject to a tier 2 capital sublimit. Finally, minority interest in the form of qualifying common stockholders' equity or qualifying perpetual preferred stock (and related surplus) in a consolidated subsidiary that is neither a U.S. depository institution nor a foreign bank (Class C minority interest) would be eligible for inclusion in tier 1 capital as a restricted core capital element. In addition, as discussed below, Class C minority interest, which would include REIT preferred securities and other asset-driven capital instruments whether issued directly by a nonbank subsidiary of the BHC or of a U.S. depository institution or foreign bank subsidiary of the BHC, is subject to a tier 2 sublimit.

As discussed above, minority interest in a typical operating subsidiary does not stave off technical insolvency or provide capital support for the broader consolidated organization. Minority interest in the equity accounts of a consolidated U.S. depository institution or foreign bank subsidiary, however, does absorb losses throughout the issuing U.S. depository institution or foreign bank and provides protection to depositors, whose deposit accounts are often government-insured. Further, a BHC generally is expected to support a subsidiary depository institution. Because of the special role that such minority interest plays in protecting subsidiary depository institutions, the Board is proposing a more favorable treatment for Class A and Class B minority interest within tier 1 capital than it is proposing for minority interest in the equity accounts of other consolidated subsidiaries, including subsidiaries of a consolidated U.S. depository institution or foreign bank subsidiary or a subsidiary of the parent BHC (Class C minority interest). The Board seeks views on the appropriateness of the distinction among types of minority interest and specifically seeks comment on the treatment of minority interest in a foreign bank subsidiary of a BHC.

The limit the Board is proposing for the aggregate amount of a BHC's cumulative perpetual preferred stock, trust preferred securities, Class B minority interest, and Class C minority interest (collectively referred to as restricted core capital elements) is 25 percent of core capital elements, net of goodwill. By netting goodwill from the calculation of the 25 percent limit, the Board is tightening the current 25 percent limit, which currently is determined on a basis that does not deduct goodwill. Deducting goodwill from core capital elements will help ensure that a BHC is not unduly leveraging its tangible equity to issue restricted core capital elements. The deduction of goodwill for the purpose of this limit is also consistent with the direction taken by the Basel Committee on Banking Supervision in its consultative paper on a new capital accord. The paper proposes that limits set for so-called innovative capital instruments within tier 1 capital be determined on a basis that deducts goodwill from the sum of core capital elements.

Qualifying cumulative perpetual preferred stock and Class B minority interest in excess of the 25 percent limit would be includable in tier 2 capital with no sublimit. To further guard against potential over-reliance on trust preferred securities and other non-equity elements within a BHC's capital structure, the Board is proposing that amounts of qualifying trust preferred securities and Class C minority interest in excess of the 25 percent limit be included in tier 2 capital but be limited, together with subordinated debt and limited-life preferred stock, to 50 percent of tier 1 capital. A BHC would be free to attribute its excess amounts of restricted core capital elements first to any qualifying cumulative perpetual preferred stock or to Class B minority interest, and second to qualifying trust

preferred securities or Class C minority interest, which are subject to the tier 2 sublimit.

To help ensure comparability in capital structures among internationally active banking organizations, the Board is proposing to amend its capital guidelines to make explicit the Board's general expectation that internationally active BHCs limit the amount of restricted core capital elements to 15 percent of the sum of core capital elements, including restricted core capital elements, net of goodwill. The 15 percent limit for internationally active banking organizations is in line with the above-mentioned 1998 Basel agreement concerning innovative capital instruments. As indicated above, most internationally active banking organizations have long used the 15 percent limit as a guideline for their issuance of innovative instruments. For this purpose, an internationally active BHC is one that has significant activity in non-U.S. markets or that is considered a candidate for the Advanced Internal Ratings Based Approach under the proposals for a new Basel Accord. The Board seeks comment on whether the capital guidelines for BHCs should contain such an explicit expression of the Board's expectation for internationally active BHCs with respect to use of restricted core capital elements, should impose an explicit 15 percent limit on the use by internationally active BHCs of restricted core capital elements, or should include a more explicit definition of internationally active BHCs.

The proposal would provide a three-year transition period for BHCs to meet the new, stricter limitations within regulatory capital by proposing that the limits on restricted core capital elements become fully effective as of March 31, 2007. During the interim, BHCs with restricted core capital elements in excess of these limits must consult with the Federal Reserve on a plan for ensuring that the banking organization is not unduly relying upon these elements in its capital base and, where appropriate, for reducing such reliance. Until March 31, 2007, BHCs generally must comply with the current tier 1 capital limits. That is, BHCs generally should calculate their tier 1 capital on a basis that limits the aggregate amount of qualifying cumulative perpetual preferred stock and qualifying trust preferred securities to 25 percent of the sum of qualifying common stockholders' equity, qualifying noncumulative and cumulative perpetual preferred stock (including related surplus), qualifying minority interest in the equity accounts of consolidated subsidiaries, and qualifying trust preferred securities. Amounts of qualifying cumulative perpetual preferred stock and qualifying trust preferred securities in excess of this limit may be included in tier 2 capital.

The Board is also proposing to revise the capital guidelines to specify the criteria trust preferred securities must meet to be eligible for inclusion in tier 1 capital. Under these criteria, which the Board has broadly used since 1996, a BHC must consult with the Federal Reserve before issuing trust preferred securities. Such consultation would normally be undertaken with the BHC's District Reserve Bank. Qualifying trust preferred securities must be undated and provide for a minimum of twenty consecutive quarters of dividend deferral, as well as a call at the BHC's option commencing no later than ten years from issuance. The Board seeks comment on the continued requirement for a call option on trust preferred securities qualifying for inclusion in tier 1 capital. The criteria also specify that the sole asset of the trust must be a subordinated note issued by the BHC, which must have a minimum maturity of thirty years and must be subordinated to all other subordinated debt of the BHC. The terms of the subordinated note must conform to the requirements of the Board's subordinated debt policy statement, 12 CFR 250.166, although, consistent with the approved structure of these securities, the note may become due and payable upon default following the deferral of dividends for more than 20 consecutive quarters. Trust preferred securities issued before May 31, 2004 for which the underlying subordinated debt does not comply with 12 CFR 250.166 may continue to be included in tier 1 capital provided the noncomplying terms (i) have been commonly used by banking organizations, (ii) do not provide an unreasonably high degree of protection to the holder in circumstances other than bankruptcy, and (iii) do not effectively allow the holder in due course of the note to stand ahead of senior or subordinated debt holders in the event of bankruptcy. With regard to trust preferred securities issued by a BHC to a pool, the proposal sets forth the longstanding Board policy that the BHC may not purchase a security issued by that same pool. Where it does hold such a security (for example, through an acquisition of another banking organization), the notional amount of that security must be deducted from the amount of trust preferred securities qualifying for inclusion in regulatory capital.

The proposal also provides that in the last five years before the underlying subordinated note matures, the associated trust preferred securities must be treated as limited-life preferred stock. Thus, in the last five years of the life of the note, the outstanding amount of trust preferred securities will be excluded from tier 1 capital and included in tier 2 capital, subject, together with subordinated debt and other limited-life preferred stock, to a limit of 50 percent of tier 1 capital. During this period, the trust preferred securities will be amortized out of tier 2 capital by one-fifth of the original amount (less redemptions) each year and excluded totally from tier 2 capital during the last year of life of the underlying note.

Other Proposed Revisions

To ensure that the overall framework for the definition of regulatory capital remains effective, the Board is proposing a number of revisions to set forth in the capital guidelines for BHCs longstanding policies with regard to the terms and features of qualifying capital instruments. The Board seeks comment on whether parallel revisions to the definition of regulatory capital for state member banks should be made in Regulation H.

The proposal notes that where a BHC has directly or indirectly funded the purchase of an instrument, the instrument generally is excluded from regulatory capital. This provision is not intended to capture unintentional, indirect funding of capital instruments but rather intentional arrangements that undermine the concept that instruments included in regulatory capital must be fully paid up. The proposal also clarifies that common stockholders' equity may not have terms or features that create investor preferences, and strengthens language on the need for voting common equity to be the dominant form of tier 1 capital. In addition, the proposal emphasizes the need for a BHC to have the unrestricted ability to waive preferred dividends and the general expectation of the Board that such dividends will be waived when a BHC is in weakened condition and clarifies the distinction between cumulative and noncumulative preferred stock. The proposal also sets forth the general exclusion from tier 1 capital of preferred instruments with dividend rate step-ups or so-called market value conversion features whereby the holder must or can convert the preferred instrument into common stock at the market price prevailing at the time of the conversion.

Such features tend to either increase an organization's cost of capital or provide powerful incentives for an organization to redeem capital at a time when its condition is deteriorating, lessening the extent to which the instrument can help a BHC weather a period of distress. Further, the proposal incorporates into the guidelines for subordinated debt a reference to the Federal Reserve's subordinated debt policy statement set forth in 12 CFR 250.166, which outlines a number of technical requirements that subordinated debt included in regulatory capital must meet. The proposal also incorporates some clarifications of that policy with regard to subordination and acceleration. The Board seeks comment on whether similar clarifying amendments, or any other amendments, should be made to the subordinated debt policy statement.

The Board also is considering clarifying either by rulemaking or through supervisory guidance the treatment of qualifying trust preferred securities issued by small BHCs (that is, BHCs with consolidated assets of $150 million or less) under the Small Bank Holding Company Policy Statement, 12 CFR Part 225 Appendix C (Small BHC Policy Statement), which generally exempts small BHCs from the Board's risk-based capital and leverage capital guidelines. One approach being considered by the Board is to generally treat the subordinated debt associated with trust preferred securities issued by small BHCs as debt for most purposes under the Small BHC Policy Statement (other than the 12-year debt reduction and 25-year debt retirement standards), except that an amount of subordinated debt up to 25 percent of a small BHC's GAAP total stockholders' equity, net of goodwill, would be considered as neither debt nor equity under the Small BHC Policy Statement. This approach would result in a treatment for trust preferred securities issued by BHCs subject to the Small BHC Policy Statement that would be more in line with the treatment of these securities that the Board is proposing for larger BHCs subject to the Federal Reserve's risk-based capital guidelines. The Board seeks comment on this approach and other approaches to revision of the Small BHC Policy Statement to ensure a fair and sound approach for small BHCs' issuances of trust preferred securities.

The Board is also proposing to delete tables and attachments in the risk-based capital standards for state member banks and BHCs that summarize the definition of capital, the risk categories, credit conversion factors, credit equivalent amount calculations, and transitional arrangements to remove unnecessary regulatory text. These tables and attachments have become outdated and unnecessary because the substance of these summaries is included in the main text of the risk-based capital standards. Furthermore, these summary tables and attachments were originally provided to assist banking organizations unfamiliar with the new framework during the transition period when the Board's risk-based capital requirements were initially implemented.

The Board welcomes comments on all aspects of this notice of proposed rulemaking.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board has determined that this proposed rule would not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board believes that this proposed rule should not impact a substantial number of small banking organizations because most small banking organizations are already substantially in compliance, or will readily come into compliance within the proposed three-year transition period, with the regulatory standards of this proposed rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1.), the Board reviewed the proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rulemaking.

Plain Language

Section 722 of the Gramm-Leach-Bliley (GLB) Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present its proposed rule in a simple and straightforward manner. The Board invites comment on whether there are additional steps the Board could take to make its rule easier to understand.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation of part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Appendix A to Part 208—[Amended]

2. In Appendix A to part 208, remove Attachments II, III, IV, V, and VI.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b). 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

4. In Appendix A to part 225, the following amendments are proposed:

a. In section II, designate the first three undesignated paragraphs as paragraphs (i), (ii), and (iii); and revise redesignated paragraphs (i), (ii) and (iii).

b. In section II.A.,

i. Revise the heading.

ii. Remove footnote 5.

c. Revise section II.A.1.

d. In section II.A.2.,

i. Revise the heading.

ii. Remove footnote 8.

iii. Redesignate footnotes 9 and 10 as footnotes 11 and 12.

iv. Revise paragraph b.

v. Revise paragraph d.

vi. Redesignate footnotes 14 through 61 as footnotes 15 through 62 respectively, and add new footnote 14.

e. Add a sentence at the end of newly redesignated footnote 17.

f. Revise newly redesignated footnotes 38 and 39.

g. Remove Attachments II, III, IV, V, and VI.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

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II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

(i) A banking organization's qualifying total capital consists of two types of capital components: ''core capital elements'' (tier 1 capital elements) and ''supplementary capital elements'' (tier 2 capital elements). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below. To qualify as an element of tier 1 or tier 2 capital, an instrument must be fully paid up and effectively unsecured. Accordingly, if a banking organization has purchased, or has directly or indirectly funded the purchase of, its own capital instrument, that instrument generally is disqualified from inclusion in regulatory capital. A qualifying tier 1 or tier 2 capital instrument also must be subordinated to all senior indebtedness of the organization. If issued by a bank, it also must be subordinated to claims of depositors. In addition, the instrument must not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

(ii) On a case-by-case basis, the Federal Reserve may determine whether, and to what extent, any instrument that does not fit wholly within the terms of a capital element set forth below, or that does not have an ability to absorb losses commensurate with the capital treatment specified below, will qualify as an element of tier 1 or tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the instrument to instruments explicitly treated in the guidelines; the ability of the instrument to absorb losses, particularly while the organization operates as a going concern; the maturity and redemption features of the instrument; and other relevant terms and factors.

(iii) Redemptions of capital instruments before stated maturity could have a significant impact on an organization's overall capital structure. Consequently, an organization considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument prior to stated maturity if such redemption could have a material effect on the level or composition of the organization's capital base. Such consultation generally would not be necessary when the instrument is to be redeemed with the proceeds of, or replaced by, a like amount of a capital instrument that is of equal or higher quality with regard to terms and maturity and the Federal Reserve considers the organization's capital position to be fully sufficient.

A. The Definition and Components of Qualifying Capital

1. *Tier 1 capital.* Tier 1 capital generally is defined as the sum of core capital elements less any amounts of goodwill, other intangible assets, interest-only strips receivables, deferred tax assets, nonfinancial equity investments, and other items that are required to be deducted in accordance with section II.B. of this appendix. Tier 1 capital must represent at least 50 percent of total qualifying capital.

a. *Core capital elements (tier 1 capital elements).* The elements qualifying for inclusion in the tier 1 component of an institution's total qualifying capital are:

i. Qualifying common stockholders' equity;

ii. Qualifying noncumulative perpetual preferred stock (including related surplus);

iii. Minority interest related to qualifying common or noncumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary (Class A minority interest); and

iv. Restricted core capital elements. The aggregate of these items is limited within tier 1 capital as set forth in section II.A.1.b. of this appendix. These elements are defined to include:

(1) Qualifying cumulative perpetual preferred stock (including related surplus);

(2) Minority interest related to qualifying cumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary (Class B minority interest);

(3) Minority interest in the form of qualifying common stockholders' equity or qualifying perpetual preferred stock (and related surplus) in a consolidated subsidiary that is neither a U.S. depository institution nor a foreign bank (Class C minority interest); and

(4) Qualifying trust preferred securities.

b. *Limits on restricted core capital elements*—i. *Limits.* (1) The aggregate amount of restricted core capital elements that may be included in a banking organization's tier 1 capital must not exceed 25 percent of the sum of all core capital elements, including restricted core capital elements, net of goodwill. Stated differently, the aggregate amount of restricted core capital elements is limited to one-third of the sum of core capital elements, excluding restricted core capital elements, net of goodwill. Amounts of restricted core capital elements in excess of this limit generally may be included in tier 2 capital.

(2) The excess amounts of restricted core capital elements that are in the form of Class C minority interest and qualifying trust preferred securities are subject to further limitation within tier 2 capital in accordance with section II.A.2.d.iv. of this appendix. A banking organization may attribute excess amounts of restricted core capital elements first to any qualifying cumulative perpetual preferred stock or to Class B minority interest, and second to qualifying trust preferred securities or to Class C minority interest, which are subject to a tier 2 sublimit.

(3) The Federal Reserve generally expects internationally active banking organizations to limit the aggregate amount of restricted core capital elements included in tier 1 capital to 15 percent of the sum of all core capital elements, including restricted core capital elements, net of goodwill.

ii. *Transition.*

(1) The quantitative limits for restricted core capital elements set forth in sections II.A.1.b.i. and II.A.2.d.iv. of this appendix do not become effective until March 31, 2007. Prior to that time, a banking organization with restricted core capital elements in amounts that cause them to exceed these limits must consult with the Federal Reserve on a plan for ensuring that the banking organization is not unduly relying on these elements in its capital base and, where appropriate, for reducing such reliance.

(2) Until March 31, 2007, the aggregate amount of qualifying cumulative perpetual preferred stock (including related surplus) and qualifying trust preferred securities that a banking organization may include in tier 1 capital is limited to 25 percent of the sum of the following core capital elements: qualifying common stockholders' equity, qualifying noncumulative and cumulative perpetual preferred stock (including related surplus), qualifying minority interest in the equity accounts of consolidated subsidiaries, and qualifying trust preferred securities. Until March 31, 2007, amounts of qualifying cumulative perpetual preferred stock and qualifying trust preferred securities in excess of this limit may be included in tier 2 capital.

(3) Until March 31, 2007, internationally active banking organizations generally are expected to limit the amount of qualifying cumulative perpetual preferred stock and qualifying trust preferred securities included in tier 1 capital to 15 percent of the sum of core capital elements set forth in section II.A.1.b.ii.(2) of this appendix.

c. *Definitions and requirements for core capital elements.*

i. *Qualifying common stockholders' equity.*

(1) *Definition.* Qualifying common stockholders' equity is limited to common stock; related surplus; and retained earnings, including capital reserves and adjustments for the cumulative effect of foreign currency translation, net of any treasury stock, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values. For this purpose, net unrealized holding gains on such equity securities and net unrealized holding gains (losses) on available-for-sale debt securities are not included in qualifying common stockholders' equity.

(2) *Restrictions on terms and features.* A capital instrument that has a stated maturity date or that has a preference with regard to liquidation or the payment of dividends is not deemed to be a component of qualifying common stockholders' equity, regardless of whether or not it is called common equity. Terms or features that grant other preferences also may call into question whether the capital instrument would be deemed to be qualifying common stockholders' equity. Features that require, or provide significant incentives for, the issuer to redeem the instrument for cash or cash equivalents will render the instrument ineligible as a component of qualifying common stockholders' equity.

(3) *Reliance on voting common stockholders' equity.* Although section II.A.1. of this appendix allows for the inclusion of elements other than common stockholders' equity within tier 1 capital, voting common stockholders' equity, which is the most desirable capital element from a supervisory standpoint, generally should be the dominant element within tier 1 capital. Thus, bank holding companies should avoid over-reliance on preferred stock or other nonvoting elements within tier 1 capital. Such nonvoting elements can include

portions of common stockholders' equity where, for example, a banking organization has a class of nonvoting common equity, or a class of voting common equity that has substantially fewer voting rights per share than another class of voting equity. Where a banking organization relies excessively on nonvoting elements within tier 1 capital, the Federal Reserve generally will require the banking organization to allocate a portion of the nonvoting elements to tier 2 capital.

ii. *Qualifying perpetual preferred stock.*

(1) *Qualifying requirements.* Perpetual preferred stock qualifying for inclusion in tier 1 capital has no maturity date, cannot be redeemed at the option of the holder, and has no other provisions or features that will require, or create significant incentives for, future redemption of the issue. Perpetual preferred stock will qualify for inclusion in tier 1 capital only if it can absorb losses while the issuer operates as a going concern and only if the issuer has the ability and legal right to defer or eliminate dividends on the preferred stock.

(2) *Restrictions on terms and features.* Perpetual preferred stock included in tier 1 capital may not have any provisions restricting the banking organization's ability to defer or eliminate dividends, other than provisions requiring prior or concurrent deferral of payments on more junior instruments, which the Federal Reserve generally expects in such instruments consistent with the notion that the most junior capital elements should absorb losses first. Dividend deferrals on preferred stock, which the Federal Reserve expects will occur either voluntarily or at its direction when an organization is in a weakened condition, must not be subject to arrangements that would diminish the ability of the deferral to shore up the organization's resources. Any perpetual preferred stock with a feature permitting redemption at the option of the issuer may qualify as tier 1 capital only if the redemption is subject to prior approval of the Federal Reserve. Features that require, or create significant incentives for, the issuer to redeem the instrument for cash or cash equivalents generally will render the instrument ineligible for inclusion in tier 1 capital. For example, perpetual preferred stock that has a credit-sensitive dividend feature—that is, a dividend rate that is reset periodically based, in whole or in part, on the banking organization's current credit standing—generally does not qualify for inclusion in tier 1 capital.[5] Similarly, perpetual preferred stock that has a dividend rate step-up or a market value conversion feature—that is, a feature whereby the holder must or can convert the preferred stock into common stock at the market price prevailing at the time of conversion—generally does not qualify for inclusion in tier 1 capital.[6] Perpetual preferred stock that does not qualify for inclusion in tier 1 capital generally will qualify for inclusion in tier 2 capital.

(3) *Noncumulative and cumulative features.* Perpetual preferred stock that is noncumulative generally may not permit the accrual or payment of unpaid dividends in any form, including in the form of common stock. Perpetual preferred stock that provides for the accumulation or future payment of unpaid dividends is deemed to be cumulative, regardless of whether or not it is called noncumulative.

iii. *Qualifying minority interest.* Minority interest in the common and preferred stockholders' equity accounts of a consolidated subsidiary (minority interest) represents stockholders' equity associated with common or preferred equity instruments issued by a banking organization's consolidated subsidiary that are held by investors other than the banking organization. Minority interest is included in tier 1 capital because, as a general rule, it represents equity that is freely available to absorb losses in the issuing subsidiary. Nonetheless, minority interest typically is not available to absorb losses in the banking organization as a whole, a feature that is a particular concern when the minority interest is issued by a subsidiary that is neither a U.S. depository institution nor a foreign bank. For this reason, these guidelines distinguish among three types of qualifying minority interest. Class A minority interest is limited to minority interest related to qualifying common and noncumulative perpetual preferred equity instruments issued directly (that is, not through a subsidiary) by a consolidated U.S. depository institution[7] or foreign bank[8] subsidiary of a banking organization. Class A minority interest is not subject to a formal limitation within tier 1 capital. Class B minority interest is limited to minority interest related to qualifying cumulative perpetual preferred equity instruments issued directly by a consolidated U.S. depository institution or foreign bank subsidiary of a banking organization. Class B minority interest is a restricted core capital element subject to the limitation set forth in section II.A.1.b.i. of this appendix, but is not subject to a tier 2 sublimit. Class C minority interest includes any minority interest related to qualifying common or perpetual preferred equity instruments that are issued by a banking organization's consolidated subsidiary that is neither a U.S. depository institution nor a foreign bank. Class C minority interest is eligible for inclusion in tier 1 capital as a restricted core capital element and is subject to the limitations set forth in section II.A.1.b.i. and II.A.2.d.iv. of this appendix. Minority interest in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's tier 1 or total capital base if the banking organization's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b. of this appendix. In addition, minority interest in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a banking organization are not included in the organization's tier 1 or total capital base if the organization excludes the consolidated assets of the program from risk-weighted assets pursuant to section III.B.6. of this appendix. This capital treatment for minority interest in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on July 1, 2004.

iv. *Qualifying trust preferred securities.* A banking organization that wishes to issue trust preferred securities and include them in tier 1 capital must first consult with the Federal Reserve. Trust preferred securities are defined as undated preferred securities issued by a trust or similar entity sponsored by a banking organization that is the sole common equity holder of the trust. Qualifying trust preferred securities must allow for dividends to be deferred for at least twenty consecutive quarters without an event of default and any notification period for deferral must be reasonably short, generally no more than one business week. The securities are otherwise subject to the same restrictions on terms and features as qualifying perpetual preferred stock as set forth in section II.A.c.ii.(2) of this appendix and must provide for a call at the banking organization's option commencing no later than ten years from the date of issuance. Further, the sole asset of the trust generally must be a subordinated note, issued by the sponsoring banking organization, that has a minimum maturity of thirty years, is subordinated to all senior and all other subordinated debt of the banking organization, and otherwise has terms that mirror those of the preferred securities issued by the trust.[9] The note may have terms

[5] Traditional floating-rate or adjustable-rate perpetual preferred stock (that is, perpetual preferred stock in which the dividend rate is not affected by the issuer's credit standing or financial condition but is adjusted periodically in relation to an independent index based solely on general market interest rates), however, generally qualifies for inclusion in tier 1 capital (provided all other requirements are met).

[6] Traditional convertible perpetual preferred stock, which the holder must or can convert into a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital (provided all other requirements are met).

[7] U.S. depository institutions are defined to include branches (foreign and domestic) of federally insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks.

[8] For this purpose, a foreign bank is defined as an institution that engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authorities of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of business; and has the power to accept demand deposits.

[9] Under generally accepted accounting principles, the trust issuing the preferred securities generally is not consolidated on the banking organization's balance sheet; rather the underlying subordinated note is recorded as a liability on the organization's balance sheet. Only the amount of the trust preferred securities issued, which is equal to the amount of the underlying subordinated note less the amount of the sponsoring banking organization's common equity investment in the trust (which is recorded as an asset on the banking organization's consolidated balance sheet), may be included in tier 1 capital. The common equity

providing for an event of default and acceleration of principal and accrued interest upon deferral of payments for twenty or more consecutive quarters but otherwise must comply with the Federal Reserve's subordinated debt policy statement set forth in 12 CFR 250.166.[10] In the last five years before the maturity of the note, the outstanding amount of the associated trust preferred securities are excluded from tier 1 capital and included in tier 2 capital, where they are subject to the amortization provisions and quantitative restrictions set forth in sections II.A.2.d.iii. and iv. of this appendix as if the trust preferred securities were limited-life preferred stock.

2. *Supplementary capital elements (tier 2 capital elements)* * * *

* * * * *

b. *Perpetual preferred stock.* Perpetual preferred stock (and related surplus) that meets the requirements set forth in section II.A.1.c.ii.(1) of this appendix is eligible for inclusion in tier 2 capital without limit.[13]

* * * * *

d. *Subordinated debt and intermediate-term preferred stock*—i. *Five-year minimum maturity.* Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as tier 2 capital. If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.

ii. *Other restrictions on subordinated debt.* Subordinated debt included in tier 2 capital must comply with the Federal Reserve's subordinated debt policy statement set forth in 12 CFR 250.166.[14] Accordingly, such subordinated debt must meet the following requirements:

(1) The subordinated debt must be unsecured.

(2) The subordinated debt must clearly state on its face that it is not a deposit and is not insured by a Federal agency.

(3) The subordinated debt must not have credit-sensitive features or other provisions that are inconsistent with safe and sound banking practice.

(4) Subordinated debt issued by a subsidiary depository institution of a bank holding company must be subordinated in right of payment to the claims of all the institution's general creditors and depositors, and must not contain provisions permitting debt holders to accelerate payment of principal or interest upon the occurrence of any event other than receivership of the institution. Subordinated debt issued by a bank holding company or its non-depository institution subsidiaries must be subordinated to all senior indebtedness of the issuer; that is, the debt must be subordinated at a minimum to all borrowed and purchased money, similar obligations arising from off-balance sheet guarantees and direct credit substitutes, and obligations associated with derivative products such as interest rate and foreign exchange contracts, commodity contracts, and similar arrangements. Subordinated debt issued by a bank holding company or its non-depository institution subsidiaries must not contain provisions permitting debt holders to accelerate payment of principal or interest upon the occurrence of any event other than bankruptcy of the bank holding company or the receivership of a major subsidiary depository institution. Thus, a provision permitting acceleration in the event that any other affiliate of the bank holding company issuer enters into bankruptcy or receivership makes the instrument ineligible for inclusion in tier 2 capital.

iii. *Discounting in last five years.* As a limited-life capital instrument approaches maturity, it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in tier 2 capital is reduced, or discounted, as these instruments approach maturity: one-fifth of the outstanding amount is excluded each year during the instrument's last five years before maturity. When remaining maturity is less than one year, the instrument is excluded from tier 2 capital.

iv. *Limits.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and limited-life preferred stock—as well as, beginning March 31, 2007, qualifying trust preferred securities and Class C minority interest in excess of the limits set forth in section II.A.1.b.i. of this appendix—that may be included in tier 2 capital is limited to 50 percent of tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). Amounts of these instruments in excess of this limit, although not included in tier 2 capital, will be taken into account in the overall assessment of an organization's funding and financial condition.

B. * * *

2. * * *

a. * * * The aggregate amount of investments in banking or finance subsidiaries[17] * * *

* * * * *

III. * * *

C. * * *

2. * * *

a. * * * U.S. depository institutions[38] and foreign banks[39]; * * *

* * * * *

5. In Appendix D to Part 225, the following amendments are proposed:

a. Amend the second sentence of section I.b. by changing the word ''that'' to ''than.''

b. In section II.b., revise footnote 3.

c. In section II.c., revise the second sentence.

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

investment in the trust should be excluded from the calculation of risk-weighted assets in accordance with footnote 15 of this appendix. Where a banking organization has issued trust preferred securities pursuant to a pooling arrangement, the organization generally must not buy back a security issued from the pool. Where a banking organization does hold such a security (for example, as a result of an acquisition of another banking organization), the amount of the trust preferred securities included in regulatory capital must, consistent with section II.(i) of this appendix, be reduced by the notional amount of the banking organization's investment in the security issued by the pool.

[10] Trust preferred securities issued before May 31, 2004, generally would not be ineligible for inclusion in tier 1 capital because of noncompliance with 12 CFR 250.166 provided the non-complying terms of the subordinated note (i) have been commonly used by banking organizations, (ii) do not provide an unreasonably high degree of protection to the holder in circumstances other than bankruptcy of the banking organization, and (iii) do not effectively allow a holder in due course of the note to stand ahead of senior or subordinated debt holders in the event of bankruptcy of the banking organization.

[13] Long-term preferred stock with an original maturity of 20 years or more (including related surplus) will also qualify in this category as an element of tier 2 capital. If the holder of such an instrument has a right to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined for risk-based capital purposes as the earliest possible date on which the holder can put the instrument back to the issuing banking organization. In the last five years before the maturity of the stock, it must be treated as limited-life preferred stock, subject to the amortization provisions and quantitative restriction set forth in section II.A.2.d.iii. and iv. of this appendix. Minority interest in the form of preferred stock (and related surplus) directly issued by a consolidated U.S. depository institution or foreign bank subsidiary that does not qualify for inclusion in tier 1 capital also generally is eligible for inclusion in this category as an element of tier 2 capital.

[14] The subordinated debt policy statement set forth in 12 CFR 250.166 notes that certain terms found in subordinated debt may provide protection to investors without adversely affecting the overall benefits of the instrument to the issuing banking organization and, thus, would be acceptable for subordinated debt included in capital. Among such acceptable terms would be a provision that prohibits a bank holding company from merging, consolidating, or selling substantially all of its assets unless the new entity assumes the subordinated debt. Another acceptable provision would be the inclusion as an event of default the failure to pay principal or interest on a timely basis, so long as such event of default does not allow the debtholders to accelerate the repayment of principal or interest.

[17] * * * For the purpose of this section, the definition of banking and finance subsidiary does not include a trust or other special purpose entity used to issue trust preferred securities.

[38] See footnote 7 of this appendix for the definition of a U.S. depository institution. For this purpose, the definition also includes U.S.-chartered depository institutions owned by foreigners. However, branches and agencies of foreign banks located in the U.S., as well as all bank holding companies, are excluded.

[39] See footnote 8 of this appendix for the definition of a foreign bank. Foreign banks are distinguished as either OECD banks or non-OECD banks. OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries (other than the U.S.) that belong to the OECD-based group of countries. Non-OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries that do not belong to the OECD–based group of countries.

II. * * *

b. * * * For the purpose of this leverage ratio, the definition of tier 1 capital as set forth in the risk-based capital guidelines contained in appendix A of this part will be used.[3] * * *

c. * * * This is consistent with the Federal Reserve's risk-based capital guidelines and long-standing Board policy and practice with regard to leverage guidelines. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 6, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–10728 Filed 5–18–04; 8:45 am]

BILLING CODE 6210–01–P

[3] Tier 1 capital for banking organizations includes the following core capital elements: qualifying common stockholders' equity, qualifying noncumulative and cumulative perpetual preferred stock, qualifying minority interest in the equity accounts of consolidated subsidiaries, and qualifying trust preferred securities. Qualifying cumulative perpetual preferred stock and trust preferred securities, as well as, beginning March 31, 2007, certain types of minority interest, are limited to 25 percent of the sum of core capital elements, net, beginning March 31, 2007, of goodwill. Internationally active banking organizations generally are expected to limit these elements to 15 percent of the sum of tier 1 capital elements, net, beginning March 31, 2007, of goodwill. In addition, as a general matter, tier 1 capital excludes goodwill; amounts of mortgage-servicing assets, non-mortgage-servicing assets, and purchased credit-card relationships that, in the aggregate, exceed 100 percent of tier 1 capital; amounts of non-mortgage-servicing assets and purchased credit-card relationships that, in the aggregate, exceed 25 percent of tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance in excess of certain limitations; and a percentage of the organization's nonfinancial equity investments. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–347–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 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 Saab Model SAAB 2000 series airplanes. This proposal would require various repetitive inspections for cracking of the drag and shear angles that attach the nacelle to the front spar of the wing, and related corrective action. The proposal also would require eventual modification of the drag and shear angles, which would end the repetitive inspections. This action is necessary to prevent fatigue cracking of the drag and shear angles, which could result in reduced structural integrity of the nacelle and wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 18, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–347–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–347–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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4057; telephone (425) 227–2125; fax (425) 227–1149.

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–347–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–347–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that inspections done by a full-scale fatigue unit have revealed cracks in the drag angles that attach the nacelle to the wing box via the upper and lower wing skin; and in the shear angles that attach the nacelle to the front spar of the wing. Fatigue cracking of the drag and shear angles of the front spar of the wing could result in reduced structural integrity of the nacelle and wing.

Explanation of Relevant Service Information

The manufacturer has issued Saab Service Bulletins 2000–54–026, Revision 01, and 2000–54–028, Revision 01, both dated June 20, 2002. The service bulletins describe procedures for

repetitive inspections for cracking and related corrective action. Service Bulletin 2000–54–026, Revision 01, describes procedures for detailed visual and eddy current inspections of the shear angles which attach the nacelle to the front spar of the wing; Service Bulletin 2000–54–028, Revision 01, describes procedures for endoscope inspections of the drag angles which attach the nacelle to the wing box via the upper and lower wing skin. If any cracking is found, both service bulletins specify following Table 1 of the Accomplishment Instructions to determine the proper action (which includes repeating the inspections at certain intervals, depending on the length of the crack). Both service bulletins also recommend contacting the manufacturer if the cracking exceeds certain damage specifications in Table 1, and sending an inspection report to the manufacturer for further corrective action.

Additionally, the manufacturer has issued Saab Service Bulletins 2000–54–027, and 2000–54–029, both dated November 4, 2002, which describe procedures for modification of the upper and lower drag angles and the shear angles which attach the nacelle to the front spar of the wing. Accomplishment of both modifications eliminates the need for the repetitive inspections. The modification procedures in Service Bulletin 2000–54–027 include an eddy current inspection of the surface of the shear angles and a rotating probe inspection of the hi-lok holes for cracking. If no cracking is found, the service bulletin describes procedures for installation of pressure pads on the shear angles. The modification procedures in Service Bulletin 2000–54–029 include an eddy current (rotating probe) inspection of the upper and lower drag angles for cracking. If no cracking is found, the service bulletin describes procedures for installation of pressure pads on the drag angles. If any cracking is found, both service bulletins describe procedures for determining the length and position of each crack, and sending a report to the manufacturer for further corrective action.

Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition. The LFV classified this service information as mandatory and issued Swedish airworthiness directives 1–174 and 1–175, both dated April 30, 2002; and 1–180 and 1–181, both dated November 8, 2002; to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept us informed of the situation described above. We have examined the findings of the LFV, 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 Proposed AD

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, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Among Swedish Airworthiness Directives, Service Information, and Proposed AD

Unlike the procedures described in the service bulletins, and referenced in the Swedish airworthiness directives, this proposed AD would not permit further flight if cracks are found in the drag and shear angles. We have determined that, because of the safety implications and consequences associated with such cracking, any cracked drag or shear angle must be repaired before further flight.

The compliance time specified in the table in paragraph 1.D., 'Compliance,' of Service Bulletin 2000–54–029 does not recommend a specific compliance time for the modification of the drag angles. The table cites cracking damage and different compliance times depending on the severity of the damage; however, we have determined the modification must be done before the accumulation of 24,000 flight cycles, as specified in the column citing no crack damage.

Swedish airworthiness directives 1–174 and 1–175 require following the repetitive inspection intervals specified in Table 1 of the referenced service bulletins (determined by the severity of the cracking); however, this proposed AD follows the repetitive inspection interval in the column citing no crack damage as specified in Table 1 of Service Bulletin 2000–54–028, Revision 01, for all airplanes.

The compliance times specified above represent an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

The referenced service bulletins specify that operators may contact the manufacturer for disposition of certain repair (cracking) conditions; however, this proposed AD would not allow this option but would require operators to repair any cracking per a method approved by either the FAA or the LFV (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the LFV would be acceptable for compliance with this proposed AD.

The referenced service bulletins also specify that operators may contact the manufacturer to obtain repetitive inspection intervals if the cracking exceeds certain parameters; however, we have determined that operators must obtain appropriate repetitive inspection/repair procedures from either the FAA or the LFV (or its delegated agent).

Although the service bulletins recommend that operators send the manufacturer a report of the inspection results, this proposed AD would not require submission of such a report.

The above differences have been coordinated with the LFV.

Clarification of Inspection Type

This proposed AD would specify a ''detailed'' inspection for cracking of the shear angles which attach the nacelle to the front spar of the wing, in lieu of a detailed ''visual'' inspection, as specified in Service Bulletin 2000–54–026, Revision 01. A note has been added to this proposed AD to define that inspection.

Cost Impact

We estimate that 3 airplanes of U.S. registry would be affected by this proposed AD.

It would take about 6 work hours per airplane to do the proposed inspections, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $1,170, or $390 per airplane, per inspection cycle.

It would take about 40 work hours per airplane to do the proposed modification of the shear angles, at an average labor rate of $65 per work hour. Required parts would cost about $6,200 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $26,400, or $8,800 per airplane.

It would take about 400 work hours per airplane to do the proposed modification of the drag angles, at an average labor rate of $65 per work hour. Required parts would cost about $41,794 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $203,382, or $67,794 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 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:

Saab Aircraft AB: Docket 2002–NM–347–AD.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the drag and shear angles of the front spar of the wing, which could result in reduced structural integrity of the nacelle and wing, accomplish the following:

Repetitive Inspections

(a) Do the inspections required by paragraphs (a)(1) and (a)(2) of this AD, at the applicable time specified in paragraph (b) of this AD.

(1) Do a detailed inspection for cracking of the shear angles which attach the nacelle to the front spar of the wing, and an eddy current inspection for cracking around the fasteners, by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–54–026, Revision 01, dated June 20, 2002.

(2) Do an endoscope inspection of the upper and lower drag angles for cracking, and an eddy current inspection for cracking around the fasteners, by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–54–028, Revision 01, dated June 20, 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.''

Compliance Times

(b) Do the inspections required by paragraph (a) of this AD at the applicable compliance time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD. Repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles until the modification required by paragraph (e) of this AD is done.

(1) For airplanes that have accumulated 14,000 or more total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated 10,000 or more total flight cycles, but fewer than 14,000 total flight cycles as of the effective date of this AD: Inspect within 1,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Inspect within 2,000 flight cycles after the effective date of this AD.

Corrective Action

(c) If any cracking is found during any inspection required by this AD: Before further flight, repair the cracking per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the LFV (or its delegated agent). In lieu of repairing the cracking, the modifications required by paragraph (e) of this AD may be done before further flight, which would end the repetitive inspections required by paragraphs (a) and (b) of this AD.

Inspections Done Per Previous Issues of Service Bulletins

(d) Inspections done before the effective date of this AD per Saab Service Bulletins 2000–54–026 and 2000–54–028, both dated April 26, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Terminating Action

(e) Except as provided by paragraph (c) of this AD: Do the modifications of the drag and shear angles of the front spar of the wing at the times specified in paragraphs (e)(1) and (e)(2) of this AD. Accomplishment of these modifications ends the repetitive inspections required by paragraphs (a) and (b) of this AD.

(1) Before the accumulation of 20,000 total flight cycles: Modify the shear angles that attach the nacelle to the front spar of the wing by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–54–027, dated November 4, 2002.

(2) Before the accumulation of 24,000 total flight cycles: Modify the upper and lower drag angles by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–54–029, dated November 4, 2002.

No Reporting Requirement

(f) Although the Saab Service Bulletins referenced in this AD recommend submitting certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Swedish airworthiness directives 1–174 and 1–175, both dated April 30, 2002; and Swedish airworthiness directives 1–180 and 1–181, both dated November 8, 2002.

Issued in Renton, Washington, on May 12, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11291 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 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 Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposal would require an inspection of the fuel tube assembly of the auxiliary power unit (APU) for clearance from adjacent components; and inspecting the fuel tube assembly and the bleed air duct shroud for discrepancies (insufficient clearance, nicks, dents, chafing, or other damage); and related investigative and corrective actions if necessary. This proposal also would require relocating certain support clamps on the APU fuel tube assembly. This action is necessary to prevent a fuel leak caused by chafing of the APU fuel tube assembly, which could result in fire in the center wing area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 18, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–285–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–285–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 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; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Sarbhpreet Singh Sawhney, 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) 228–7340; fax (516) 794–5531.

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–285–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–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. TCCA advises that an investigation of a fuel leak revealed chafing of the fuel tube assembly for the auxiliary power unit (APU). This fuel tube assembly is on the bleed air duct shroud, which is located in the center wing area where it is attached to a fairlead by two support clamps. It is possible that incorrect location of these support clamps may result in insufficient clearance between the fuel line and the bleed air duct, and/or between the fuel line and the gust lock cable. If there is insufficient clearance, the APU feed tube assembly can chafe, which could result in a fuel leak and possible fire in the center wing area.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 8–49–19, Revision A, dated July 7, 2003, which describes procedures for doing a visual inspection of the APU fuel tube assembly. This inspection includes examining the routing of the fuel tube assembly to ensure that the tube has sufficient clearance between the shroud of the bleed air duct and the gust lock cable; and inspecting the fuel tube assembly and the bleed air duct shroud for other discrepancies such as nicks, dents, chafing, or other damage. If the visual inspection shows no discrepancies, the service bulletin specifies to relocate the clamps on the APU fuel tube assembly. If the visual inspection shows discrepancies, the service bulletin describes procedures for related investigative and corrective actions before relocating the support clamps for the fuel tube assembly. These related investigative and corrective actions include:

• Blending out the damaged area and measuring the depth of the reworked area.

• For fuel tubes on which damage (nicks, chafing, or dents) is within acceptable limits: Doing an eddy current or fluorescent penetrant inspection for cracks. If cracks are found, or if the damage is outside the acceptable limits specified in the service bulletin: Reworking/repairing the tube assembly or replacing it with a new or serviceable tube assembly.

• Visually inspecting the replaced tube assembly for fuel leakage after rework or repair.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2003–22, dated September 3, 2003, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined the 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

We estimate that up to 125 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,125, or $65 per airplane.

The cost impact figure discussed above is 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 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2003–NM–285–AD.

Applicability: Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial number 003 through 585 inclusive; certificated in any category; with auxiliary power unit (APU) installation per Standard Option Only (S.O.O.) 8155 or Change Request (CR) 849SO08155.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fuel leak caused by chafing of the APU fuel tube assembly, which could result in fire in the center wing area, accomplish the following:

Inspection, Relocation and Related Investigative and Corrective Actions

(a) Within 6 months after the effective date of this AD: Do a general visual inspection of the APU fuel tube assembly for discrepancies. The inspection includes examining the routing of the fuel tube assembly to ensure that the tube has sufficient clearance between the shroud of the bleed air duct and the gust lock cable; and inspecting the fuel tube assembly and the bleed air duct shroud for other discrepancies such as nicks, dents, chafing, or other damage. If the inspection shows no discrepancies, before further flight, relocate the clamps on the fuel tube assembly. If the inspection shows discrepancies, before further flight, do the applicable related investigative and corrective actions, and relocate the clamps on the fuel tube assembly. Accomplish all actions per the Accomplishment Instructions of Bombardier Service Bulletin 8–49–19, Revision A, dated July 7, 2003.

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.''

Inspections Accomplished Per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD per Bombardier Service Bulletin 8–49–19, dated May 13, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(c) 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.

Note 2: The subject of this AD is addressed in Canada airworthiness directive CF–2003–22, dated September 3, 2003.

Issued in Renton, Washington, on May 11, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11290 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–46–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) 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 Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. This proposal would require an inspection of the thrust reverser cascades for correct installation; removing and reinstalling the cascade in the correct location, if necessary; and reworking the thrust reverser cascades to add locating spigots (metal protrusions) to each cascade; as applicable. This action is necessary to prevent asymmetric reverse thrust and consequent loss of control of the airplane during reverse thrust operation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 18, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–46–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–46–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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: James Delisio, 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) 228–7321; fax (516) 794–5531.

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–46–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–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. TCCA advises that an incident occurred during a pre-delivery flight where, upon landing and application of maximum thrust reverser, the airplane veered to the right from the runway heading. Investigation revealed that the thrust reverser cascades configuration of the left engine was incorrectly installed during production. The cascades have different part numbers to control the correct installation location; however, it is physically possible that diagonally opposed thrust reverser cascades can be intermixed in either engine at any time the assemblies are changed. Incorrectly installed thrust reverser cascades, if not corrected, could cause asymmetric reverse thrust and consequent loss of control of the airplane during reverse thrust operation.

Explanation of Relevant Service Information

For certain airplanes, Bombardier has issued Alert Service Bulletin A670BA–78–001, Revision A, dated April 23, 2002, which describes procedures for performing a general visual inspection of the thrust reverser cascades for correct installation, and removing and reinstalling the cascade in the correct cascade location, if necessary. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2002–30, dated May 22, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

For certain airplanes, Bombardier has also issued Service Bulletin 670BA–78–003, dated January 22, 2004, which describes procedures for reworking the thrust reverser cascades to add locating spigots (metal protrusions) to each

cascade. TCCA has approved this service bulletin.

Bombardier Service Bulletin 670BA–78–003 refers to GE Aircraft Engines Service Bulletin 670GE–78–008, dated December 17, 2003, as an additional source of information for accomplishment of the rework.

Accomplishment of the actions specified in the Bombardier service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the applicable Bombardier service bulletins described previously.

Differences Between Proposed Rule and Canadian Airworthiness Directive

Canadian airworthiness directive CF–2002–30 requires inspection of the thrust reverser cascades (interim action) per Bombardier Alert Service Bulletin A670BA–78–001, Revision A. Unlike the Canadian airworthiness directive, for certain airplanes, the proposed AD would require rework of the thrust reverser cascades (terminating action) per Bombardier Service Bulletin 670BA–78–003. After the issuance of the Canadian airworthiness directive, TCCA approved Bombardier Service Bulletin 670BA–78–003, and is considering superseding CF–2002–30 to mandate rework of the thrust reverser cascades (terminating action).

Cost Impact

The FAA estimates that 102 airplanes of U.S. registry would be affected by this proposed AD. The average labor rate is $65 per work hour.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $6,630, or $65 per airplane, per inspection cycle.

It would take approximately 4 work hours per airplane to accomplish the proposed modification. Based on these figures, the cost impact of the proposed rework on U.S. operators is estimated to be $26,520, or $260 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. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

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:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–46–AD.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, serial numbers 10003 through 10116 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetric reverse thrust and consequent loss of control of the airplane during reverse thrust operation, accomplish the following:

Inspection

(a) For airplanes with serial numbers 10005 through 10040 inclusive: Within 72 flight hours or 30 days from the effective date of the AD, whichever occurs first, perform a general visual inspection of the thrust reverser cascades for correct installation, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–78–001, Revision A, dated April 23, 2002.

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.''

Repetitive Inspections for Certain Airplanes

(b) For airplanes with serial numbers 10003 through 10116 inclusive: Each time the thrust reverser cascade is removed and reinstalled, perform the action specified in paragraph (a) of this AD.

Corrective Action

(c) If any thrust reverser cascade is found to be incorrectly installed during any inspection required by paragraph (a) or (b) of this AD, before further flight, remove and reinstall the cascade in the correct location, per the Accomplishment Instructions of

Bombardier Alert Service Bulletin A670BA–78–001, Revision A, dated April 23, 2002.

Terminating Action

(d) Within 6,000 flight hours from the effective date of the AD, rework the thrust reverser cascades by accomplishing all the actions in the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–003, dated January 22, 2004. Accomplishment of the rework terminates the requirements of paragraphs (a) and (b) of this AD.

Note 2: Bombardier Service Bulletin 670A–78–003, references GE Aircraft Engines Service Bulletin 670GE–78–008, dated December 17, 2003, as an additional source of service information for the accomplishment of the rework.

Parts Installation

(e) Except as provided by paragraphs (b) and (c) of this AD, as of the effective date of this AD, no person may install on any airplane a thrust reverser cascade with powerplant system, serial numbers PS0003 through PS0116 inclusive, left- and right-hand, unless it has been reworked per Bombardier Service Bulletin 670BA–78–003, dated January 22, 2004.

Previous Actions

(f) Inspections accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A670BA–78–001, dated April 19, 2002, are considered acceptable for compliance with paragraph (a) and (b) of this AD.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–30, dated May 22, 2002.

Issued in Renton, Washington, on May 11, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11289 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–279–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 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 Airbus Model A310 series airplanes. This proposal would require repetitive inspections for fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors of the bottom skin panel of the wings, and related corrective action. The proposal also provides for an optional terminating action, which would end the repetitive inspections. This action is necessary to prevent fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors and the bottom skin panel of the wings, which could result in reduced structural integrity of the wings. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 18, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–279–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–279–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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

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–279–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–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A310 series airplanes. The DGAC advises that full-scale fatigue testing of a Model A310 airplane on which Airbus Modification 5106 had been done revealed skin cracking in the modified area. The cracking had initiated from one of the attachment holes of the landing plate of the aileron access door. In addition, during routine maintenance of a post-modification 5106 Model A310 airplane, a 62-millimeter crack was found on the right-hand wing in the

bottom skin panel. Fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors and the bottom skin panel of the wings could result in reduced structural integrity of the wings.

The manufacturer has developed an inspection program for Model A310 series airplanes on which Airbus Modification 5106 has been done. The manufacturer is also conducting a review of the inspection program developed for airplanes on which Airbus Modification 5106 has not been done.

Related Rulemaking

On December 8, 1998, the FAA issued AD 98–26–01, amendment 39–10942 (63 FR 69179, December 16, 1998) applicable to all Airbus Model A310 series airplanes. That AD requires various inspections to detect fatigue cracks at certain locations on the fuselage, horizontal stabilizer, wings and tail; repair or modification, if necessary; and installation of doublers. The actions specified by that AD are intended to prevent reduced structural integrity of the fuselage, horizontal stabilizer, and wings.

Explanation of Relevant Service Information

Airbus has issued the following service information:

- Airbus Service Bulletin A310–57–2004, Revision 2, dated March 5, 1990, which describes procedures for modification of the landing plate of the access door of the bottom skin panel of the left and right wings. The modification includes removing the existing clearance fit bolts from the landing plate of the aileron access door on the left and right wings, and installing reamed oversized interference fit bolts. Accomplishment of the modification eliminates the need for the repetitive inspections.
- Airbus Service Bulletin A310–57–2081, dated June 11, 2002, which describes procedures for modification of the access door and the bottom skin panel of the left and right wings. The modification includes a high frequency eddy current inspection of the fastener holes of the modification areas for cracking, and repair per Service Bulletin A310–57–2082, if cracking is found. The service bulletin also specifies contacting the manufacturer for repair instructions if cracking is found outside the modification areas. If no cracking is found, the service bulletin describes procedures for cutting the landing plate of the aileron access door into three parts, cold expanding of the fastener holes of the landing plate, installing an interference plug; installing an external reinforcement plate, cold expanding of the attachment holes of the reinforcement plate, and installing interference fit fasteners.
- Airbus Service Bulletin A310–57–2082, dated June 11, 2002, which describes procedures for a high frequency eddy current inspection for cracking of the area around the fasteners of the landing plate of the aileron access doors of the bottom skin panel of the left and right wings, and related corrective action. The related corrective action includes doing a permanent repair (installing a repair plate and new landing plates), or a temporary repair (crack-stop drilling) followed by repetitive inspections until a permanent repair is done.

Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition. The DGAC classified this service information as mandatory and issued French airworthiness directive 2003–242(B), dated June 25, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Consistent with the findings of the DGAC, the proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to find cracking before it represents a hazard to the airplane.

Differences Among French Airworthiness Directive, Service Information, and Proposed AD

Unlike the procedures described in Service Bulletin A310–57–2082, and the French airworthiness directive, this proposed AD would not permit further flight if cracks are found in the area around the fasteners of the landing plate of the aileron access doors of the wings. The service bulletin specifies the option of a temporary repair (crack-stop drilling) if cracking is found in the landing plate and wing skin panel, and follow-on repetitive inspections until a permanent repair is done. We have determined that, because of the safety implications and consequences associated with such cracking, no temporary repair is allowed and a permanent repair must be done before further flight. However, under the provisions of paragraph (e) of the proposed AD, we may approve requests for a temporary repair provided that data are submitted to substantiate that (1) the crack is not part of multi-site damage, (2) crack growth is easily detectable, and (3) established inspection procedures would detect cracked structure at intervals permitting a permanent repair to be done before reduced structural integrity of the wings can occur.

Service Bulletin A310–57–2081 specifies that operators may contact the manufacturer for disposition of certain repair conditions, but this proposed AD would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

For airplanes on which Airbus Modification 5106 has been done, the French airworthiness directive specifies an inspection threshold of a certain number of flights ''since new.'' However, this proposed AD specifies an inspection threshold of a certain number of flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first. This decision is based on our determination that ''since new'' may be interpreted differently by different operators. We

find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

Cost Impact

We estimate that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 2 work hours per airplane to do the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $5,980, or $130 per airplane, per inspection cycle.

The cost impact figure discussed above is 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 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:

Airbus: Docket 2003–NM–279–AD.

Applicability: Model A310 series airplanes, certificated in any category; on which Airbus Modification 12525 has not been done during production.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors and the bottom skin panel of the wings, which could result in reduced structural integrity of the wings, accomplish the following:

Repetitive Inspections

(a) For airplanes on which Airbus Modification 5106 (Airbus Service Bulletin A310–57–2004, Revision 2, dated March 5, 1990) has not been done as of the effective date of this AD: Within 2,000 flight cycles after the effective date of this AD, or within 3,000 flight cycles after the last inspection done per paragraph (k) of AD 98–26–01, amendment 39–10942 (63 FR 69179, December 16, 1998), whichever is first; do a high frequency eddy current (HFEC) inspection for cracking of the area around the fasteners of the landing plate of the wing bottom skin panel No. 2 of the left and right wings. Do the inspection per the Accomplishment Instructions of Airbus Service Bulletin A310–57–2082, dated June 11, 2002. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 1,900 flight cycles, until accomplishment of the terminating action specified in paragraph (d) of this AD.

(b) For airplanes on which Airbus Modification 5106 has been done as of the effective date of this AD: Do the HFEC inspection required by paragraph (a) of this AD at the applicable time specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 1,900 flight cycles, until accomplishment of the terminating action specified in paragraph (d) of this AD.

(1) For airplanes that have accumulated fewer than 17,000 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect prior to the accumulation of 18,000 total flight cycles.

(2) For airplanes that have accumulated 17,000 or more total flight cycles, but fewer than 19,001 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 19,001 or more total flight cycles, but fewer than 21,001 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect with 1,200 flight cycles after the effective date of this AD.

(4) For airplanes that have accumulated 21,001 or more total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

Corrective Action

(c) If any cracking is found during any inspection required by paragraph (a) or (b) of this AD: Before further flight, do the actions required by either paragraph (c)(1) or (c)(2) of this AD.

(1) Do a permanent repair of the area by doing the applicable corrective actions per the Accomplishment Instruction of Airbus Service Bulletin A310–57–2082, dated June 11, 2002. Accomplishment of the permanent repair terminates the repetitive inspections required by this AD for the repaired area only.

(2) Do the terminating action specified in paragraph (d) of this AD.

Optional Terminating Action

(d) Modification of the landing plate of the aileron access doors of the wing bottom skin panel No. 2 of the left and right wings by doing all the actions, per the Accomplishment Instructions of Airbus Service Bulletin A310–57–2081, dated June 11, 2002, terminates the requirements of this AD. Where the service bulletin specifies contacting the manufacturer for disposition of certain repair conditions that may be associated with the modification procedure, this AD requires that the repair be done per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile, or its delegated agent.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2003–242(B), dated June 25, 2003.

Issued in Renton, Washington, on May 11, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11288 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17616; Airspace Docket No. 04–ASO–6]

Proposed Amendment of Class E Airspace; Dayton, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to amend Class E5 airspace at Dayton, TN. As a result of an evaluation, it has been determined a modification should be made to the Dayton, TN, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway 3, Standard Instrument Approach Procedure (SIAP) to Hardwick Field Airport, Cleveland, TN. Addtional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before June 18, 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–2004–17616/ Airspace Docket No. 04–ASO–6, 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, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17616/Airspace Docket No. 04–ASO–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

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 Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Dayton, TN. Class E airspace designations for 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, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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, Airspace Designations and Reporting Points, 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.

* * * * *

ASO TN E5 Dayton, TN [REVISED]

Dayton, Mark Anton Airport, TN
(Lat. 35°29′10″ N, long. 84°55′52″ W)
Hardwick Field Airport
(Lat. 35°13′12″ N, long. 84°49′57″ W)
Harwick NDB
(Lat. 35°09′13″ N, long. 84°54′21″ W)
Bledsoe County Hospital, Pikeville, TN
Point in Space Coordinates
(Lat. 35°37′34″ N, long. 85°10′38″ W)
Bradley Memorial Hospital, Cleveland, TN
Point in Space Coordinates
(Lat. 35°10′52″ N, long. 84°52′56″ W)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Mark Anton Airport, and that airspace within a 6.5-mile radius of Hardwick Field Airport and within 3.5 miles northwest and 5.3 miles southeast of the 227° bearing from the HDI NDB extending from the 6.5-mile radius to 10 miles southwest of the NDB, and that airspace within a 6-mile radius of the point in space (lat. 35°37′34″ N, long. 85°10′38″ W) serving Bledsoe County Hospital, Pikeville, TN, and that airspace within a 6-mile radius of the point in space (lat. 35°10′52″ N, long. 84°52′56″ W) serving Bradley Memorial Hospital, Cleveland, TN; excluding that airspace within the CHA Class C airspace area and that airspace within the Athens, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on May 6, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–11302 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 1625–AA00

Security Zones; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Second supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish security zones encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. These security zones are necessary to protect the Alyeska Marine Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: Comments and related material must reach the Coast Guard on or before July 30, 2004.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686. Marine Safety Office, Valdez, Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, 105 Clifton, Valdez, AK 99686 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Catherine Huot, Port Operations Department, U.S. Coast Guard Marine Safety Office, Valdez, Alaska, (907) 835–7218.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

Section 165.T17–003–Security zone: Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska;

Section 165.T17–004–Security zone; Port Valdez; and

Section 165.T17–005–Security zones: Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule issued in April 2002, which expired July 30, 2002, created temporary § 165.T17–009, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska—security zone''.

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired July 30, 2002. This extension was to allow for the completion of a notice-and-comment rulemaking to be completed to create permanent security zones to replace the temporary zones. On October 23, 2002, we published the notice of proposed rulemaking that sought public comment on establishing permanent security zones similar to the temporary security zones (67 FR 65074). The comment period for that NPRM ended December 23, 2002. Although no comments were received that would result in changes to the proposed rule an administrative omission was found that resulted in the need to issue a supplemental notice of proposed rulemaking (SNPRM) to address the ''Collection of Information'' section of the proposed rule (68 FR 14935, March 27, 2003). Then, on December 30, 2002, we issued a temporary final rule (68 FR 26490, May 16, 2003) that established security zones to extend the temporary security zones until June 30, 2003. This extension was to allow for a rulemaking for the permanent security zones to be completed. Then, on September 12, 2003, we issued a temporary final rule (68 FR 62009, October 31, 2003) that established security zones to extend the temporary security zones through March 12, 2004.

Elsewhere in today's **Federal Register** we have published a temporary final rule that creates temporary security zones through October 31, 2004, to allow for the rulemaking involving this SNPRM to be completed. This SNPRM proposes permanent security zones identical to the ones in that TFR. Additionally, this SNPRM makes changes to the security zones described in the original NPRM published on October 23, 2002 (67 FR 65074). These changes include more accurate position information for the boundaries of the security zone and removal of the requirement for written requests for entry into the zone.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 04–002, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The Coast Guard is taking this action for the protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001, and the continuing threat that remains from those responsible for those acts. As a vibrant port with a high volume of oil tanker traffic, these security zones are necessary to provide protection for the tankers transiting through the Port of Valdez and Valdez Narrows. These security zones are a necessary part of the Coast Guard's efforts to provide for the safety of the people and environment in Valdez and the surrounding area.

Discussion of Proposed Rule

This supplemental notice of proposed rulemaking sets out three security zones. The Trans-Alaska Pipeline Valdez Marine Terminal Security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving Security Zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows Security Zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is active only when a TAPS Tanker is in the zone.

This action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels. The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones in order to mitigate the impact on commercial and recreational users.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Economic impact is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tanker Moving Security Zone is in effect for a short duration.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permission to enter the zone is available, and the Tanker Moving Security Zone is in effect for a short duration. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

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 section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Catherine Huot, Marine Safety Office Valdez, Alaska at (907)835–7218.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment in Prince William Sound. It simply provides guidelines for vessels transiting in the Captain Of The Port, Prince William Sound Zone so that vessels may transit safely in the vicinity of the Port of Valdez and the TAPS terminal. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

§ 165.T17–030 [Removed]

2. Remove 165.T17–030.

3. Add new § 165.1710 to read as follows:

§ 165.1710 Port Valdez and Valdez Narrows, Valdez, Alaska—security zones.

(a) *Location.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′25″ N, 146°26′18″ W; thence northerly to yellow buoy at 61°06′25″ N, 146°26′18″ W; thence east to the yellow buoy at 61°06′25″ N, 146°21′20″ W; thence south to 61°04′25″ N, 146°21′20″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′08″ N, 146°21′15″ W) and Sawmill Spit (61°05′08″ N, 146°26′19″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85–20 (b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters approximately 200 yards either side of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′15″ N, 146°37′18″ W; thence south west to 61°04′00″ N, 146°39′52″ W; thence southerly to 61°02′32.5″ N, 146°41′25″ W; thence north west to 61°02″40.5″ N, 146°41′47″ W; thence north east to 61°04′07.5″ N, 146°40′15″ W; thence north east to 61°05′22″ N, 146°37′38″ W; thence south east back to the starting point at 61°05′15″ N, 146°37′18″ W.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters within approximately 200 yards on either side of the Valdez Narrows Optimum Track line.

(b) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service, as required under 33 CFR part 161 and § 165.1704, may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign, by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: April 9, 2004.

M.A. Swanson,

Commander, United States Coast Guard, Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 04–11232 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 72, 75, and 96

[OAR–2003–0053; FRL–7663–9]

Public Hearing for the Supplemental Proposal for the Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing.

SUMMARY: The EPA is announcing a public hearing for the ''Supplemental Proposal for the Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule).'' The hearing will be held on June 3, 2004, in Alexandria, Virginia. For convenience, we refer to the supplemental proposal as the Supplemental Proposal, and the Clean Air Interstate Rule as the CAIR.

On January 30, 2004, the EPA proposed a rule that we now term the Clean Air Interstate Rule (CAIR). This proposal would require 29 States in the eastern part of the country and the District of Columbia to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that contribute significantly to fine particulate matter and 8-hour ozone nonattainment problems in downwind States. The Supplemental Proposal includes proposed rule language; proposed State reporting requirements; proposed State implementation plan (SIP) approvability criteria; a proposed model cap-and-trade rule; a discussion of the interaction between this proposal as well as both the title IV acid rain requirements and the NO_X SIP Call; and a proposed determination that a State's compliance with the CAIR through imposition of the emissions reductions requirements on the State's electric generating units (EGUs) would exempt those sources from any applicable requirements of section 169A to implement Best Available Retrofit Technology.

DATES: The public hearing for the supplemental proposal for the Clear Air Interstate Rule will be held on June 3, 2004. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearing.

ADDRESSES: The hearing will be held at the Holiday Inn Select, Old Town Alexandria, 480 King Street, Alexandria, Virginia 22314, phone 703–549–6080.

Written comments on this Supplemental Proposal may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the Supplemental Proposal for the addresses and detailed instructions.

Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through EPA's electronic Docket system at *http://www.epa.gov/edocket.*

The EPA Web site for this rulemaking, which will include information about the public hearing announced today, is at *http://www.epa.gov/interstateairquality.*

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing or have questions concerning it, please contact Jo Ann Allman at the address given below under **SUPPLEMENTARY INFORMATION**. Questions concerning the proposed CAIR should be addressed to Scott Mathias, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539–01), Research Triangle Park, NC 27711, telephone number (919) 541–5310, e-mail at *mathias.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearing

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning issues raised in today's proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked by the last day of the comment period, as specified in the proposal.

The public hearing for the ''Supplemental Proposal for the Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)'' will be held on June 3, 2004, in Alexandria, Virginia. The hearing will begin at 9 and end at 5. The meeting facility and phone number is provided above under **ADDRESSES.**

If you would like to present oral testimony at the hearing, please notify Jo Ann Allman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail *allman.joann@epa.gov* no later than May 31, 2004. She will provide you with a specific time to speak. Oral testimony will be limited to 5 minutes for each commenter.

We will be able to provide equipment for commenters to show overhead slides or make computerized slide presentations only if we receive requests in advance. Commenters should notify Jo Ann Allman if they will need specific equipment. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD ROM or in paper copy.

The hearing schedule, including the speaker list, will be posted on EPA's Web pages for the proposal at *http://www.epa.gov/interstateairquality* prior to the hearing. A verbatim transcript of the hearing and written statements will be included in the rulemaking docket.

The EPA will hold a separate public hearing for a related proposal, ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations,'' at the same facility on the following day, June 4, 2004. The EPA is holding the hearings on consecutive days to facilitate travel plans for persons wishing to attend both hearings.

How Can I Obtain Copies Of This Document and Other Related Information?

The Supplemental Proposal for the CAIR is available on EPA's Web site for the CAIR rulemaking at *http://www.epa.gov/interstateairquality* and will be published shortly in the **Federal Register**.

The EPA has established the official public docket for the CAIR under Docket ID No. OAR–2003–0053. Please refer to the proposal for detailed information on accessing information related to the proposal.

Dated: May 13, 2004.

J.E. Noonan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–11305 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040507144–4144–01; I.D. 043004A]

RIN 0648–AQ85

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery

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

ACTION: Proposed 2004 specifications for the Atlantic bluefish fishery; request for comments.

SUMMARY: NMFS proposes 2004 specifications for the Atlantic bluefish fishery, including total allowable landings (TAL), state-by-state commercial quotas, recreational harvest limits, and recreational possession limits. The intent of the specifications is to conserve and manage the bluefish resource.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on June 3, 2004.

ADDRESSES: You may submit comments, identified by Docket Number 040507144–4144–01 or RIN Number 0648–AQ85, by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: *2004bluefishspecs@noaa.gov*. Include the following document identifier: ''Comments–2004 Bluefish Specifications.'' in the subject line of the message.
- Fax: 978–281–9135.
- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the outside of the envelope, ''Comments--2004 Bluefish Specifications.''

Copies of supporting documents, including the Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and the Essential Fish Habitat Assessment (EFHA) are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA, IRFA, and EFHA are accessible via the Internet at *http:/www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The FMP requires that the Council recommend, on an annual basis, a TAL, which is comprised of a commercial quota and a recreational harvest limit.

The FMP also requires that: (1) The TAL for any given year be set based on the fishing mortality rate (F) resulting from the stock rebuilding schedule contained in the FMP, or the estimated F in the most recent fishing year, whichever is lower; and (2) a total of 17 percent of the TAL be allocated to the commercial fishery, as a quota, with the remaining 83 percent allocated as a recreational harvest limit, with the stipulation that, if 17 percent of the TAL is less than 10.50 million lb (4.762 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.50 million lb (4.762 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed TAL.

The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

Proposed 2004 Specifications

Proposed TAL

On August 5, 2003, the Council adopted specifications for the 2004 Atlantic bluefish fishery. The Council submitted its recommendations and analysis November 24, 2003, and submitted a supplement to clarify and correct the document on January 20, 2004. NMFS has reviewed the Council's recommendation and has found it complies with the FMP objectives. Although these proposed specifications are intended to be in place at the beginning of the fishing year, the delay in implementing the proposed specifications for 2004 should not compromise this fishery because the Atlantic States Marine Fisheries Commission (ASMFC) measures, which are already in place in applicable states, provide equivalent conservation for bluefish. NMFS is proposing to implement the Council's recommended specifications.

For the 2004 fishery, the stock rebuilding program in the FMP restricts F to 0.31. However, the 2002 fishery (the most recent fishing year for which F can be calculated) produced an F of only 0.184. So, in accordance with the FMP, the measures proposed for 2004 were developed to achieve F=0.184. Projection results indicate that the bluefish stock will increase to an estimated biomass of 165.853 million lb (365.504 million kg) in 2004. This biomass can produce a Total Allowable Catch (TAC) of 34.215 million lb (15.5 million kg) in 2004 at F=0.184. The proposed TAL for 2004 is derived from this value by subtracting estimated discards of 2.365 million lb (1.06 million kg) from the TAC. This results in a proposed TAL for 2004 of 31.85 million lb (14.45 million kg).

Proposed Commercial Quota and Recreational Harvest Limit

If the TAL for the 2004 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 5.414 million lb (2.456 million kg), with a recreational harvest limit of 26.435 million lb (11.990 million kg). However, recreational landings from the last several years were much lower than the recreational allocation for 2004, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg, respectively). Since the recreational fishery is not projected to land its 26.435 million-lb (11.990 million-kg) harvest limit in 2004, the FMP allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). Therefore, consistent with the FMP and regulations governing the bluefish fishery, the Council recommended, and NMFS proposes, to transfer 5.085 million lb (2.036 million kg) from the initial 2004 recreational allocation of 26.435 million lb (11.990 million kg), resulting in 21.350 million lb (9.684 million kg) for a 2004 proposed recreational harvest limit and a proposed quota of 10.5 million lb (4.76 million kg). The proposed 2004 commercial quota would be the same as was allocated in 2003 and also as implemented by the states for 2004 under the ASMFC's Interstate Fishery Management Plan for Atlantic Bluefish. A Notice of Request for Proposals was published in the **Federal Register** to solicit research proposals for

2004 that could utilize research set-aside (RSA) TAC authorized by the FMP, based on research priorities identified by the Council (January 27, 2003; 68 FR 3864). One research project that would utilize bluefish RSA has been approved by the NOAA Grants Office. Therefore, a 297,750–lb (135,057–kg) RSA is also proposed. Due to the allocation of the bluefish RSA, the proposed commercial quota for 2004 is 10.401 million lb (4.718 million kg) and the proposed recreational harvest limit is 21.150 million lb (9.59 million kg).

Proposed Recreational Possession Limit

The Council also recommends maintaining the current recreational possession limit of 15 fish to meet the recreational harvest limit.

Proposed State Commercial Allocations

The annual commercial quota for bluefish will be distributed to the states (see Table 1.). Proposed state commercial allocations for the 2004 commercial quotas are shown in the table below, based on the percentages specified in the FMP, less the proposed RSA allocation.

TABLE 1—ANNUAL BLUEFISH STATE COMMERCIAL QUOTAS

State	% of quota	2004 Commercial Quota (lb)	2004 Commercial Quota (kg)	2004 Commercial Quota (lb) With Research Set-Aside	2004 Commercial Quota (kg) With Research Set-Aside
ME	0.6685	70,193	31,839	69,536	31,541
NH	0.4145	43,523	19,742	43,116	19,557
MA	6.7167	705,254	319,901	698,660	316,907
RI	6.8081	714,851	324,254	708,168	321,220
CT	1.2663	132,962	60,311	131,719	59,747
NY	10.3851	1,090,436	494,619	1,080,242	489,990
NJ	14.8162	1,555,701	705,661	1,541,158	699,058
DE	1.8782	197,211	89,454	195,367	88,617
MD	3.0018	315,189	142,969	312,242	141,631
VA	11.8795	1,247,348	565,793	1,235,687	560,498
NC	32.0608	3,366,384	1,526,982	3,334,913	1,512,691
SC	0.0352	3,696	1,676	3,661	1,661
GA	0.0095	998	453	988	448
FL	10.0597	1,056,269	479,121	1,046,394	474,636
Total	100.0000	10,500,015	4,762,727	10,401,851	4,744,652

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action are provided in the preamble of this proposed rule. A summary of the IRFA follows:

An active participant in the commercial bluefish fishery sector is defined as being any vessel that reported having landed one or more pounds of bluefish to NMFS-permitted dealers during calendar year 2002. Vessels fishing for bluefish with a Federal permit intending to sell their catch must do so to NMFS-permitted dealers. All vessels affected by this rulemaking have gross receipts less than $3.5 million and are considered to be small entities under the Regulatory Flexibility Act (RFA). Since there are no large entities participating in this fishery, there are no disproportionate effects resulting from small versus large entities. Since costs are not readily available, vessel profitability cannot be determined directly. Therefore, changes in gross revenue were used as a proxy for profitability. Of the active, Federally-permitted vessels in 2002, 928 landed bluefish from Maine to North Carolina. Dealer data do not cover vessel activity from South Carolina to Florida. South Atlantic Trip Ticket Report data indicate that 1,004 vessels landed bluefish in North Carolina, including those with Federal permits and those fishing only in state waters. These data also indicate that bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings. Therefore, it was assumed that no vessels landed bluefish from those states. According to South Atlantic Trip Ticket Report data, 101 commercial vessels landed bluefish to dealers on Florida's east coast in 2002.

In addition, in 2002, approximately 2,063 party/charter vessels caught bluefish in either state or Federal waters. All of these vessels are considered small entities under the RFA having gross receipts of less than $5 million annually. Since the possession limits would remain at 15 fish per person, there should be no impact on demand for party/charter vessel fishing, and therefore, no impact on revenues earned by party/charter vessels.

The Council analyzed three alternatives. The TAL recommendation and RSA are unchanged in the alternatives, as the TAL is the level that would achieve the target F in 2004, and the RSA is the amount allocated through the grants process. The difference between the preferred alternative (Alternative 1) and Alternatives 2 and 3, therefore, relates only to the manner in which the overall TAL is allocated between the commercial and recreational components of the bluefish fishery. Under Alternative 1, the commercial quota allocation is 10.401 million lb (4.718 million kg), with a recreational harvest limit of 21.150 million lb (9.68 million kg). Under Alternative 2, the commercial quota allocation is 5.363 million lb (2.433 million kg) with a recreational harvest limit of 26.188 million lb (11.878 million kg). Under Alternative 3, the commercial quota allocation is 9.493 million lb (4.346 million kg) with a recreational harvest limit of 22.058 million lb (10.100 million kg).

The preferred commercial quota represents a less than 1–percent decrease from the 2003 commercial quota, with the decrease due to the amount specified for the RSA. The 2004 recreational harvest limit would be 21 percent lower than the recreational harvest limit specified for 2003. However, the recreational harvest limit would still be about twice the recreational landings for 2002. Bluefish landings for the 2000–2002 period

ranged from 29 to 59 percent lower than the recreational harvest limits specified in those years, and a projection based on preliminary recreational data for 2003 indicates that landings will be 46 percent lower than the recreational harvest limit specified for 2003. Therefore, under this alternative, no vessels would realize significant revenue reductions. A total of 928 vessels were projected to incur revenue losses as a result of the proposed commercial quota allocation, with 95 percent of those estimated to incur losses of less than 1 percent, and none to incur losses greater than 5 percent. The affected entities would be mostly smaller vessels that land bluefish in Massachusetts, New Jersey, New York and North Carolina. In addition, economic analysis of South Atlantic Trip Ticket Report data indicated that, on average, the slight reduction in the commercial quota from 2003 to 2004 would be expected to result in small reductions in revenue for fishermen that land bluefish in North Carolina (0.05 percent) and Florida (0.03 percent).

The allocations specified in Alternative 2 represent a 49–percent decrease in the commercial quota from the 2003 commercial quota, and a 2–percent decrease in the recreational harvest limit from the 2003 recreational harvest limit. The 2004 recreational harvest limit would be more than twice the 2003 projected recreational landings. The reduction in the commercial quota would cause 15 vessels to have revenue losses of 50 percent or more, while 123 would have revenue losses from 5 to 49 percent. An additional 790 vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicates an average of 4.43 and 0.03–percent reductions in revenue for fishermen that land bluefish in North Carolina and Florida, respectively.

Alternative 3 represents a 9–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2004. The 2004 recreational harvest limit would be 17 percent lower than the estimated recreational landings in 2003. Under this scenario, a total of 53 vessels would incur revenue losses from 5 to 19 percent due to the reduction in the commercial quota. An additional 875 commercial vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicate reduction in revenues of 0.82 and 0.05–percent for fishermen that land bluefish in North Carolina and Florida, respectively.

The Council further analyzed the impacts on revenues of the proposed RSA specified in all three alternatives. The social and economic impacts of this proposed RSA are expected to be minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as $101,235 dockside, based on a 2002 price of $0.34 per pound for bluefish. Assuming an equal reduction among all 928 active dealer reported vessels, this could mean a reduction of about $109 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than 1 percent decrease), if 2 percent of the TAL is used for research. It is unlikely that there would be negative impacts. A copy of this analysis is available from the Council (see **ADDRESSES**).

Dated: May 14, 2004.

Rebecca Lent,

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

[FR Doc. 04–11350 Filed 5–18–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 97

Wednesday, May 19, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee (RAC) will meet May 21, 2004, in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) public comment, (3) sub-committees, (4) prioritize prior interest list, (5) evaluation criteria, tracking and monitoring forms, (6) matters before the group-discussion only, (9) next agenda and meeting date.

DATES: The meeting will be held on May 21, 2004, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by May 18, 2004. Public comment will have the opportunity to address the committee at the meeting.

Dated: May 10, 2004.

Blaine Baker,

Designated Federal Official.

[FR Doc. 04–11348 Filed 5–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for Extension and Revision of a Currently Approved information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intention to request an extension for and revision to the currently approved information collection for ''Regulations Governing the National Inspection and Weighing System under the United States Grain Standards Act and under the Agricultural Marketing Act of 1946.''

DATES: We will consider comments that we receive by July 19, 2004.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-mail: Send comments via electronic mail to *comments.gipsa@usda.gov.*
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Background Documents: Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For information regarding the collection of information activities and the use of the information, contact Tess Butler (202) 720–7486, or at the address listed above.

Copies of this information collection can be obtained from Cathy McDuffie, the Information Management Specialist, at (301) 734–5190.

SUPPLEMENTARY INFORMATION: Congress enacted the United States Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) and the Agricultural Marketing Act (AMA) (7 U.S.C. 1621 *et seq.*) to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities. These statutes provide for the establishment of standards and terms which accurately and consistently measure the quality of grain and related products, provide for uniform official inspection and weighing, provide regulatory and service responsibilities, and furnish the framework for commodity quality improvement incentives to both domestic and foreign buyers. The Federal Grain Inspection Service (FGIS) of USDA's Grain Inspection, Packers and Stockyards Administration establishes policies, guidelines, and regulations to carry out the objectives of the USGSA and the AMA. Regulations appear at 7 CFR Parts 800, 801, and 802 for the USGSA and 7 CFR Part 868 for the AMA.

The USGSA, with few exceptions, requires official certification of export grain sold by grade. Official services are provided, upon request, for grain in domestic commerce. The AMA authorizes similar inspection and weighing services, upon request, for rice, pulses, flour, corn meal, and certain other agricultural products. Conversely, the regulations promulgating the USGSA and AMA require specific information collection and recordkeeping necessary to carry out requests for official services. Applicants for service must specify the kind and level of service desired, the identification of the product, the location, the amount, and other pertinent information in order that official personnel can efficiently respond to their needs.

Official services under the USGSA are provided through FGIS field offices and delegated and/or designated State and private agencies. Delegated agencies are State agencies delegated authority under the Act to provide official inspection service, Class X or Class Y weighing services, or both, at one or more export port locations in the State. Designated

agencies are State or local governmental agencies or persons designated under the Act to provide either official inspection services, Class X or Class Y weighing services, or both, at locations other than export port locations. State and private agencies, as a requirement for delegation and/or designation, must comply with all regulations, procedures, and instructions in accordance with provisions established under the USGSA. FGIS field offices oversee the performance of these agencies and provide technical guidance as needed.

Official services under the AMA are performed, upon request, on a fee basis for domestic and export shipments either by FGIS employees, individual contractors, or cooperators. Contractors are persons who enter into a contract with FGIS to perform specified inspection services. Cooperators are agencies or departments of the Federal Government which have an interagency agreement or State agencies which have a reimbursable agreement with FGIS.

Title: Regulations Governing the National Inspection and Weighing System Under the USGSA and AMA of 1946.

OMB Number: 0580–0013.

Expiration Date of Approval: December 31, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The United States Grain Standards Act (7 U.S.C. 71 *et seq.*) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) provide that USDA inspect, certify and identify the class, quality, quantity and condition of agricultural products shipped or received in interstate and foreign commerce.

Estimate of Burden: Public reporting and record keeping burden for this collection of information is estimated to average .09 hours per response.

Respondents: Grain producers, buyers, and sellers, elevator operators, grain merchandisers, and official grain inspection agencies.

Estimated Number of Respondents: 2,400.

Estimated Number of Responses per Respondent: 1041.6.

Estimated Total Annual Burden on Respondents: 225,000 hours.

Comments: 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–11328 Filed 5–18–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–884]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 19, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

Amendment to Final Determination

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on April 16, 2004, the Department published its notice of final determination of sales at less than fair value (LTFV) in the investigation of certain color television receivers (CTVs) from the People's Republic of China (PRC). *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (Apr. 16, 2004). On April 19, 2004, we received allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from Konka Group Company, Ltd. (Konka), TCL Holding Company Ltd. (TCL), and the petitioners in this investigation (*i.e.*, Five Rivers Electronic Innovations, LLC, the International Brotherhood of Electrical Workers, and the Industrial Division of the Communications Workers of America) that the Department had made ministerial errors in its final determination. On April 26, 2004, we received two submissions containing rebuttal comments from the petitioners concerning TCL's and Konka's ministerial error allegations. In our April 27 and 29, 2003, letters, we instructed the petitioners to refile one of their submissions (*i.e.*, the submission concerning ministerial error allegations raised by TCL) to remove untimely filed new comments. On May 3, 2004, because the petitioners did not comply with the Department's requests, we rejected the submission entirely.

After analyzing Konka's, TCL's, and the petitioners' submissions, we have determined, in accordance with 19 CFR 351.224(e), that we made the following general ministerial errors in our calculations performed for the final determination:

- We inadvertently included values associated with zero quantities in our calculation of the surrogate value for diodes;
- We inadvertently excluded certain costs from the denominators of the financial ratios calculated for each of the surrogate producers selected in this case;
- We treated packing expenses inconsistently in our calculations for the surrogate CTV producers and the PRC respondents;
- We inadvertently calculated the cost of plastic parts for Konka using plastic part consumption figures that did not correspond with the POI;
- We incorrectly tested the mark-ups charged by Konka's affiliated market-economy supplier by comparing this amount to the costs incurred by a different affiliated party;
- We inadvertently included freight costs for one of Konka's market economy inputs when the price charged was on a delivered basis;
- We inadvertently double-counted certain market-economy freight expenses for TCL; and
- We inadvertently excluded certain factor values when calculating the normal value for one of Xiamen Overseas Chinese Electronic Co., Ltd.'s (XOXECO's) products.

Correcting these errors resulted in revised margins for Sichuan Changhong Electric Co., Ltd., Konka, TCL, and XOXECO. In addition, we have revised the calculation of the all others rate accordingly.

For a detailed discussion of the ministerial errors noted above, as well

as the Department's analysis, *see* the May 13, 2004, memorandum to Louis Apple from the Team entitled ''Ministerial Error Allegations in the Final Determination of the Antidumping Duty Investigation on Certain Color Television Receivers from the People's Republic of China.''

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of CTVs from the PRC. The revised dumping margins are as follows:

Manufacturer/exporter	Original final margin (percent)	Amended final margin (percent)
Haier Electric Appliances International Co	21.49	22.94
Hisense Import and Export Co., Ltd.	21.49	22.94
Konka Group Company, Ltd	11.36	9.69
Philips Consumer Electronics Co. of Suzhou Ltd	21.49	22.94
Shenzhen Chaungwei-RGB Electronics Co., Ltd	21.49	22.94
Sichuan Changhong Electric Co., Ltd	24.48	26.37
Starlight International Holdings, Ltd	21.49	22.94
Star Light Electronics Co., Ltd	21.49	22.94
Star Fair Electronics Co., Ltd	21.49	22.94
Starlight Marketing Development Ltd.	21.49	22.94
SVA Group Co., Ltd	21.49	22.94
TCL Holding Company Ltd	22.36	21.25
Xiamen Overseas Chinese Electronic Co., Ltd	4.35	5.22
PRC-wide	78.45	78.45

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of CTVs from the PRC. The CBP shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice. This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–11325 Filed 5–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a non-confidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be non-confidential. An original and five (5) copies, plus two (2) copies of the non-confidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by e-mail at *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, non-confidential versions of the comments will be made available to the applicant, if necessary, for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 85–10A18.''

A summary of the application for an amendment follows.

Summary of the Application

Applicant: U.S. Shippers Association (''USSA''), P.O. Box 67, East Texas, Pennsylvania 18046–0067.

Contact: Ronald Baumgarten, Jr., Counsel to Applicant, telephone: (202) 662–5265.

Application No.: 85–10A18.

Date Deemed Submitted: May 4, 2004.

The USSA original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and last amended on April 3, 2001 (66 FR 35773, July 9, 2001).

Proposed Amendment: USSA seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l) (2004)): Bayer CropScience, Research Triangle Park, North Carolina (Controlling Entity: Bayer Corporation, Bayer CropScience AG, D–40789 Monheim am Rhein,

Germany); ConocoPhillips, Borger, Texas; and Solvay Chemicals, Inc., Houston, Texas (Controlling Entity: Solvay America, Inc., Houston, Texas).

2. Change the listing of the Members of the Certificate to reflect corporate organizational changes: Aventis Crop Science, USA LP to Bayer CropScience (Aventis Crop Science was acquired by Bayer Corporation); Phillips Petroleum Company merged with Conoco, Inc., to form ConocoPhillips; and Solvay Minerals, Inc., combined with Solvay Interox and Solvay Performance Chemicals to form Solvay Chemicals, Inc. (Controlling Entity: Solvay America, Inc.).

3. Delete the following members: Aventis Crop Science, USA LP, Research Triangle Park, North Carolina (Controlling Entity: Aventis Crop Science Holding SA, 69009 Lyon, France); Phillips Petroleum Company, Bartlesville, Oklahoma; and Solvay Minerals, Inc., Houston, Texas (Controlling Entity: Solvay S.A., Brussels, Belgium).

Dated: May 13, 2004.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 04–11313 Filed 5–18–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Market Development Cooperator Program (MDCP)

AGENCY: International Trade Administration (ITA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: ITA is soliciting U.S. export promotion projects to be conducted by eligible entities for periods of up to three years. Project award periods normally begin between October 1, 2004 and January 1, 2005, but may begin as late as April 1, 2005. MDCP awards help to underwrite the start-up costs of new export ventures that export multipliers are often reluctant to undertake without Federal Government support. MDCP aims to develop, maintain and expand foreign markets for non-agricultural goods and services produced in the United States.

DATES: Proposals must be received by ITA no later than 5 p.m. e.s.t., July 14, 2004. A public meeting to discuss the competition will be held on June 23, 2004, at 10 a.m. in Room 6059 at the address indicated below.

ADDRESSES: Proposals must be submitted to ITA, U.S. Department of Commerce, HCHB 3215; Washington, DC 20230, or via *http://www.grants.gov.* The full funding opportunity announcement and the application kit for this request for applications are available at *http://www.export.gov/mdcp* or at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Interested parties who are unable to access information via Internet or who have questions may contact Mr. Brad Hess by mail (*see* **ADDRESSES**), by phone at 202–482–2969, by fax at 202–482–4462, or via Internet at *Brad_Hess@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access: The full funding opportunity announcement for MDCP is available at *http://www.grants.gov* or *http://www.export.gov/mdcp.*

Funding Availability: Approximately $2,000,000 will be available through this announcement for fiscal year 2004. Applicants must match each federal dollar two to one. Awards are limited to $400,000 each. ITA anticipates making five to nine awards, depending on the amounts requested and the availability of funds.

Statutory Authority: 15 U.S.C. 4723.

CFDA: 11.112, Market Development Cooperator Program.

Eligibility: Trade associations, state departments of trade and their regional associations, and non-profit industry organizations, including export multiplier organizations such as World Trade Centers, centers for international trade development and small business development centers are eligible to apply for an MDCP award.

Cost Sharing Requirements: Two dollars for every federal dollar. The first dollar must be cash. The rest of the match may be cash or in kind.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of federal programs.''

Evaluation and Selection Procedures: After receiving the applications, ITA will screen each one to determine the applicant's eligibility to receive an award. After receiving all applications, ITA and other relevant federal professionals will be invited to review the applications. A selection panel composed of ITA managers will review the applications using the evaluation criteria below, score them, and forward a ranked funding recommendation to the Assistant Secretary for Manufacturing and Services. The Assistant Secretary makes the final selection of award winners, justifying any deviation from the selection panel's ranked recommendation.

Evaluation Criteria: The selection panel reviews each eligible application based on five evaluation criteria. The evaluation criteria scores assigned by the panel determine which applications are recommended for funding. The evaluation criteria are listed below.

(1) Export Success Potential (20%). This is the potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term.

(2) Performance Measures (20%). Applicants must provide quantifiable estimates of how the project will increase or enhance the U.S. industry's export presence in the foreign market(s).

(3) Partnership and Priorities (20%). This criterion indicates the degree to which the project initiates or enhances partnership with ITA and the degree to which the proposal furthers or is compatible with ITA's priorities.

(4) Creativity and Capacity (20%). Applicants demonstrate creativity, innovation, and realism in the project work plan as well as their institutional capacity to carry out the work plan.

(5) Budget and Sustainability (20%). This criterion indicates the reasonableness and effectiveness of the itemized budget for project activities, the amount of the cash match that is readily available, and the probability that the project can be continued on a self-sustained basis after the completion of the award.

The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

Selection Factors: The Assistant Secretary may deviate from the selection panel's ranked recommendation only based on the following factors: (1) Scores of individual selection panel members and the selection panel's written assessments, (2) Degree to which applications satisfy ITA priorities, (3) Geographic distribution of the proposed awards, (4) Diversity of industry sectors and overseas markets covered by the proposed awards, (5) Diversity of project activities represented by the proposed awards, (6) Avoidance of redundancy and conflicts with the initiatives of other federal agencies, and (7) Availability of funds.

The ITA priorities referred to under Evaluation Criteria (3) and Selection Factor (2) are listed below. ITA is interested in receiving proposals to promote U.S. exports that include, but are not limited to, projects that: (1) Improve the competitiveness of U.S. manufacturing and service industries by addressing impediments to innovation

and cost reduction; (2) Increase competitiveness of U.S. industries by addressing non-tariff barriers, especially those related to standards; (3) Capitalize on trade opportunities resulting from trade agreements; (4) Increase overall export awareness and awareness of ITA programs and services among U.S. companies, by making SMEs export-ready or by facilitating deal-making; (5) Ensure compliance with trade agreements; (6) Increase the competitiveness of U.S. industries by developing commercial infrastructure in emerging economies; (7) Develop non-traditional approaches to creating demand for the products/services developed from new U.S. technologies; and (8) Support the Administration's broader foreign policy objectives through trade-related initiatives.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, SF–LLL, and CD–346 has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. section 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: May 14, 2004.

Robert W. Pearson,

Director, Office of Planning, Coordination and Management, Manufacturing and Services, International Trade Administration, Department of Commerce.

[FR Doc. 04–11314 Filed 5–18–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051304B]

NOAA Recreational Fisheries Strategic Plan Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The National Marine Fisheries Service (NOAA Fisheries) is hosting a public meeting to present a draft of the NOAA Fisheries Strategic Plan for Recreational Fisheries 2005–2010. The primary goal of the meeting is to collect public input on the DRAFT plan. Additional meetings are planned for Texas, Alabama, and North Carolina. Specific dates times and locations of these meetings will be published in the **Federal Register**.

DATES: The meetings will be held on June 3 and June 26, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody, MA and Honolulu, HI. See **SUPPLEMENTARY INFORMATION** for specific dates, times, addresses, and directions. Copies of the DRAFT Plan will be available at each meeting, or can be made available in advance of the meeting on the web at *http://www.nmfs.noaa.gov/recfish/* or by contacting Mr. Michael Kelly, Division Chief, NOAA Fisheries Office Constituent Services, 301–713–2379.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kelly, Division Chief, Office of Constituent Services at (301) 713–2379.

SUPPLEMENTARY INFORMATION:

June 3, 2004, 6–9 p.m.Holiday Inn Peabody, One Newbury Street (Rt 1), Peabody, MA.

1. Directions: The hotel is located directly on Route 1 on the northbound side. From 495/93/24/95 South. Take 128 Northbound. Take exit 44A onto 1 South.Turn around at first set of lights, staying to the left. Turn onto Rt. 1 North. Hotel is down on the right. From 95 North: Take 128 to Topfield/Boston exit. Follow Rte. 1 South to first set of lights. Turn around to Rte. 1 North. Hotel is down on the right. From Boston: Follow 93 to Tobin Bridge. Take Rte. North into Peabody.

June 26, 2004, 6–9 p.m. Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI 96814.

2. Directions: From the Honolulu International Airport: Travel east on Nimitz Highway for 7 miles toward Waikiki, turn left on Atkinson Drive.After the Ala Moana Center, Hotel is on the left immediately after the first light.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed toMr. Michael Kelly at 301 713–9504 at least 5 days prior to the meeting date.

Dated May 13, 2004.

Rebecca Lent,

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

[FR Doc. 04–11351 Filed 5–18–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

May 14, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: May 19, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 69670, published on December 15, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 14, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on May 19, 2004, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Fabric Group	
219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629,as a group.	285,810,956 square meters of which not more than 70,679,236 square meters shall be in Category 219; not more than 86,385,732 square meters shall be in Category 313–O; not more than 50,260,790 square meters shall be in Category 314–O; not more than 67,537,941 square meters shall be in Category 315–O; not more than 70,679,236 square meters shall be in Category 317–O; not more than 7,853,246 square meters shall be in Category 326–O, and not more than 47,119,494 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	31,817,441 square meters of which not more than 12,726,974 square meters shall be in Category 625; not more than 12,726,974 square meters shall be in Category 626; not more than 12,726,974 square meters shall be in Category 627; not more than 12,726,974 square meters shall be in Category 628; and not more than 12,726,974 square meters shall be in Category 629.
Limits not in a group	
338/339/638/639	10,068,773 dozen of which not more than 9,084,896 dozen shall be in Categories 338–S/339–S/638–S/639–S [7].
347/348	10,554,337 dozen of which not more than 3,297,669 dozen shall be in Categories 347–T/348–T [8].
351/651	1,595,077 dozen.
361	3,184,764 numbers.
448	43,464 dozen.
604	4,414,030 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–11324 Filed 5–18–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a), that the Commodity Futures Trading Commission's Global Markets Advisory Committee will conduct a

public meeting on Wednesday, June 2, 2004. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 from 2 to 5 p.m. The purpose of the meeting is to discuss global markets-related issues in the financial services and commodity markets.

The agenda will consist of the following:

(1) Call to order and introductions.

(2) Report on activities of CFTC Office of International Affairs.

(3) Cross-border clearing issues.

(4) International regulatory coordination/enforcement harmonization.

(5) Other business.

(6) Discussion of future meetings and topics.

(7) Adjournment.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Walter L. Lukken, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: Global Markets Advisory Committee, c/o Commissioner Walter L. Lukken, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Lukken in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact David A. Stawich at 202–418–5071.

Issued by the Commission in Washington, DC on May 12, 2004.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–11274 Filed 5–18–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On March 15, 2004, the Department of Education published a notice in the **Federal Register** (page 12135, column 1) for the information collection, ''Title III Biennial Evaluation Report Required of State Education Agencies Regarding Activities Under the No Child Left Behind (NCLB) Act of 2001''. However, there was an error in the e-mail address for the public to submit comments. The corrected e-mail address is *Sheila.Carey@ed.gov.* The Department will still continue to accept public comments for another week. In addition, another notification, the 30-day comment period notice, will be published in the **Federal Register** shortly. This will provide the public the continued opportunity to comment to the Office of Management and Budget.

Dated: May 13, 2004.

Angela C. Arrington,

Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–11273 Filed 5–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to educational services for young children with autism and their families. The meeting will be open and accessible to the general public.

Date and Time: FICC Meeting: Wednesday, June 9, 2004 from 9 a.m. to 4:30 p.m.

ADDRESSES: American Institutes for Research, 1000 Thomas Jefferson Street, NW., Conference Rooms B & C, 2nd Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early invention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–11242 Filed 5–18–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Concerning

Civil Uses of Atomic Energy between the United States and Canada, and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

This subsequent arrangement concerns the retransfer of seventeen 18-element driver fuel bundles, totaling 22,000 grams uranium, 4,355 g of which is in the isotope uranium-235, from Atomic Energy of Canada, Limited to the Korea Atomic Energy Research Institute (KAERI) Hanaro Reactor Center. The material, which is currently located Chalk River, Ontario, will be used by KAERI for additional fueling for the Hanaro Reactor Center. The material, which was originally obtained from the U.S. Department of Energy, Oak Ridge, exported to Canada under export license number XSNM3305.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the publication of this notice.

For the Department of Energy.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 04–11316 Filed 5–18–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7663–5, E-Docket ID No. OAR–2004–0073]

Agency Information Collection Activities: Proposed Collection; Comment Request; Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants, EPA ICR Number 1658.04, OMB Control Number 2060–0373

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 19, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0073, to EPA online using EDOCKET (our preferred method), by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Pamela S. Long, Office of Air Quality Planning and Standards, Mail Code C339–03, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–0641; fax number (919) 541–5509; e-mail address: *long.pam@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0073, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the 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*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are those who must submit an application for a permit to construct or reconstruct a major source of hazardous air pollution, permitting agencies who review the permit applications, and EPA staff who review some permitting authority decisions.

Title: Information Collection Request for 40 CFR Part 63 Regulations Governing Constructed and Reconstructed Major Sources, EPA ICR Number 1658.04, OMB Control Number 2060–0373, Expiration date October 31, 2004.

Abstract: Section 112(g)(2)(B) of the Clean Air Act as amended in 1990 requires that maximum achievable control technology (MACT), determined on a case-by-case basis, be met by constructed or reconstructed major sources of hazardous air pollutants. In order to receive a permit to construct or reconstruct a major source, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory requirements. Permitting agencies, either State, local or Federal, to review and approve or disapprove the permit application. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

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. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection was published on December 15, 2000. No comments were received concerning the ICR renewal.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The reporting and recordkeeping burden was estimated as follows:

Estimated Number of Respondents: 3,000.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 92,210.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

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.

Dated: May 12, 2004.

William T. Harnett,

Director, Information Transfer and Program Integration Division.

[FR Doc. 04–11345 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7664–5; E-docket Number: ORD–2004–0005]

Proposed Oral Reference Dose (RfD) for Barium and Compounds

AGENCY: Environmental Protection Agency.

ACTION: Notice of external peer-review panel meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an external peer-review panel meeting for the draft document entitled, ''Proposed Oral Reference Dose (RfD) for Barium and Compounds'' (NCEA–S–1683). The document was prepared by EPA's National Center for Environmental Assessment (NCEA) of the Office of Research and Development.

DATES: The half-day meeting will begin on June 10, 2004, at 9 a.m. and end at 12 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at American Geophysical Union (AGU) Headquarters, 2000 Florida Avenue NW., Washington, DC 20009. Under an Interagency Agreement with EPA and the Department of Energy, the Oak Ridge Institute of Science and Education (ORISE) is organizing, convening, and conducting the peer-review meeting. To attend the meeting, register by June 1, 2004, by visiting: *http://www.orau.gov/2004bariumreview.* Interested parties may also register by contacting Leslie Shapard (ORISE) at (865) 241–5784. Space is limited, and reservations will be accepted on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics should be directed to Leslie Shapard, Oak Ridge Institute of Science and Education (ORISE), MS–17, PO Box 117, Oak Ridge, TN 37831, 865–241–5784 (telephone), 865–241–3168 (facsimile) or *shapardL@orau.gov* (email). If you have questions about the document, contact Stiven Foster, IRIS Staff, National Center for Environmental Assessment, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; 202–564–2239 (telephone), 202–565–0075 (facsimile), *foster.stiven@epa.gov* (email). See Supplementary Information below regarding access to the document.

SUPPLEMENTARY INFORMATION: The EPA is seeking external peer review on the draft document entitled: ''Proposed Oral Reference Dose (RfD) for Barium and Compounds.'' EPA's Office of Research and Development (ORD), National Center for Environmental Assessment (NCEA), developed the proposed RfD in response to a Request for Correction that was submitted to EPA in 2002. The request was submitted to the Agency in accordance with the *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (U.S. EPA, 2002). The Request for Correction was related to the derivation of the RfD as presented on EPA's Integrated Risk Information System (IRIS) database. IRIS is a database that contains scientific Agency positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. In response to the Request for Correction, the data used to derive the current RfD on IRIS have been re-evaluated by NCEA, resulting in the proposed RfD presented in this document.

EPA has established an official public docket for this peer review announcement under Docket ID No. ORD–2004–0005. The official public docket consists of the document referenced in this notice and a list of charge questions that have been submitted to the external peer reviewers. Both the document and charge are available on the Internet at *http://www.epa.gov/docket/.* Once in the system, select ''search,'' then key in the appropriate docket identification number (ORD–2004–0005). A limited number of paper copies are available by contacting the IRIS Hotline at (202) 566–1676 or (202) 566–1749 (facsimile). If you are requesting a paper copy, please provide your name, mailing address, and the document title, ''Proposed Oral Reference Dose (RfD) for Barium and Compounds'' (NCEA–S–1683). Copies are not available from ORISE. You may also find a copy of the document at the EPA Docket Center Reading Room. The address of the Public Reading Room is EPA Docket Center, Environmental Protection Agency, Room B102, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Visitation is between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. 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.

Dated: April 30, 2004.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–11341 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7664–4]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that a proposed prospective purchaser agreement (''Purchaser Agreement'') associated with the Whitmoyer Laboratories Superfund Site, Myerstown, Lebanon County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against the Jackson Township and Jackson Township Recreational Authority (collectively, the ''Purchaser''). The settlement would require the Purchaser to, among other things, use the Property as a recreational green space in accordance with use restrictions to preserve the protective site features and the monitoring, routine maintenance and reporting requirements set forth in the Purchaser Agreement.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before June 18, 2004.

ADDRESSES: The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Patricia C. Miller (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Whitmoyer Laboratories Superfund Site, Prospective Purchaser Agreement'' and ''EPA Docket No. CERC–03–2004–0003 PP'' and should be forwarded to Patricia C. Miller at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia C. Miller (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2662.

Dated: May 10, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–11342 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7664–3]

Proposed Prospective Purchaser Agreement and Covenant Not To Sue Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Regarding the General Color Company Superfund Site, Camden, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (''EPA'') is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve a prospective purchaser's liability for response costs incurred by EPA at the General Color Company Superfund Site in Camden, New Jersey.

DATES: Comments must be provided on or before June 18, 2004.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway–17th Floor, New York, New York 10007–1866 and should refer to: In the Matter of the General Color Company Superfund Site, U.S. EPA Region II Docket No. CERCLA–02–2004–2013.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway–17th Floor, New York, New York 10007–1866, Attention: Alexandra Ince, Esq. (212) 637–3144.

SUPPLEMENTARY INFORMATION: In accordance with EPA guidance, notice is hereby given of a proposed administrative settlement concerning the General Color Company Superfund Site, located in the City of Camden, Camden County, New Jersey. CERCLA provides EPA the authority to settle certain claims for response costs incurred by the United States with the approval of the Attorney General of the United States.

The proposed settlement provides that Westfield Acres Urban Renewal Associates II, LP, a private developer which plans on redeveloping the General Color Company Superfund Site, will perform work at the Site in return for a covenant not to sue under sections 106 or 107 of CERCLA from the United States. EPA is also waiving any liens it may have at the General Color Company Superfund Site under sections 107(l) and 107(r) of CERCLA.

A copy of the proposed administrative settlement agreement and covenant not to sue, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, 290 Broadway–17th Floor, New York, New York 10007–1866.

Dated: May 6, 2004.

Anthony Cancro,

Acting Deputy Regional Administrator, Region 2.

[FR Doc. 04–11344 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7664–1]

Proposed CERCLA Section 122(h) Administrative Agreement for the Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site, located in and about Essex, Hudson, Bergen and Passaic Counties, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement requires thirty-one (31) Settling Parties to make seven payments totaling $10,000,000 to resolve their potential liability for performance of the Remedial Investigation/Feasibility Study (''RI/FS'') and for Past Response Costs and Future Response Costs incurred and to be incurred in connection with the RI/FS for the Lower Passaic River Study Area. EPA has reserved its rights in the event of cost overruns. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate.

EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before June 18, 2004.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Diamond Alkali Superfund Site located in and about Essex, Hudson, Bergen and Passaic Counties, New Jersey, Index No. CERCLA–02–2004–2011. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Kedari Reddy, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3106.

Dated: May 5, 2004.

Kathleen C. Callahan,

Deputy Regional Administrator, Region 2.

[FR Doc. 04–11343 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[RM–10803; DA 04–1380]

Broadcasters' Service to Their Local Communities

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: The Federal Communications Commission will hold a Localism Task Force hearing in Rapid City, South Dakota, on May 26, 2004. The purpose of the hearing is to gather information from consumers, industry, civic organizations, and others on broadcasters' service to their local communities.

DATES: The hearing will be held on Wednesday, May 26, 2004, from 5:30 p.m. to 9 p.m.

ADDRESSES: The hearing will be held at the Surbeck Student Center Ballroom at the South Dakota School of Mines and Technology, located at 501 East Saint Joseph Street, Rapid City, South Dakota.

FOR FURTHER INFORMATION CONTACT: Rebecca Lockhart, Media Bureau, 202–418–7777.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) will hold a Localism Task Force hearing on the subject of localism, on May 26, 2004, in Rapid City, South Dakota. Several FCC Commissioners will preside. The purpose of the hearing is to gather information from consumers, industry, civic organizations, and others on broadcasters' service to their local communities. An important focus of the hearing will be to gather information and to conduct outreach for the ongoing nationwide round of broadcast station license renewals. The designated speakers will include representatives from consumer and advocacy groups as well as broadcasters. The hearing format will enable members of the public to participate via an ''open microphone'' session. Additional details regarding the designated speakers, agenda, and hearing format will be announced shortly.

1. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Please include a description of the accommodation needed, providing as much detail as you can, as well as contact information in case additional information is needed. Please make your request as early as possible. Last minute requests will be accepted, but may be impossible to fulfill. Please send a request by e-mail to *fcc504@fcc.gov*, or call the Consumer & Governmental Affairs Bureau. For sign language interpreters, CART, and other reasonable accommodations, call 202–418–0530 (voice) or 202–418–0432 (TTY). For accessible format material (Braille, large print, electronic files, and audio format), call 202–418–0531 (voice) or 202–418–7365 (TTY).

2. A live audiocast of the hearing will be available at the Commission's Web site at *www.fcc.gov* on a first-come, first served basis. In addition, the hearing will be recorded, and the record will be available to the public. The public may also file comments or other documents with the Commission and should reference RM–10803. Filing instructions are provided at *http://www.fcc.gov/localism/filing_instructions.doc*.

Federal Communications Commission.

Royce D. Sherlock,

Chief, Industry Analysis Division, Media Bureau.

[FR Doc. 04–11427 Filed 5–18–04; 8:45 am]

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 a.m. on Friday, May 21, 2004, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Notice of Proposed Rulemaking—12 CFR part 364: Proper Disposal of

Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003.

Memorandum and resolution re: Notice of Proposed Rulemaking—Proposed Amendments to Part 327 of the FDIC Rules and Regulations Concerning Certified Statements and Requests for Review of Assessment Computations.

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 14, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–1180 Filed 5–18–04; 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 10:30 a.m. on Friday, May 21, 2004, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of title 5, United States Code, to consider matters relating to the Corporation's corporate and supervisory 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 14, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–1181 Filed 5–18–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011539–010.

Title: Libra/Lykes/TMM Space Charter and Sailing Agreement.

Parties: Companhia Libra de Navegacao; Lykes Lines Limited, LLC; and TMM Lines Limited, LLC.

Synopsis: The modification expands the geographic scope of the agreement to include ports in Colombia and the Dominican Republic, authorizes the parties to operate a second string of vessels under the agreement, increases the number and size of vessels to be used under the agreement, adjusts the parties' space allocations, revises the notice period for resignations, deletes obsolete language, and restates the entire agreement. The parties request expedited review.

Agreement No.: 011701–006.

Title: Pacific East Coast Express Agreement.

Parties: Compania Sud Americana de Vapores S.A., Companhia Libra de Navegacao, Norasia Container Lines Limited, Montemar Maritime S.A., and CSAV Sud Americana de Vapores S.A.

Synopsis: The modification revises the port rotation of the parties' services under the agreement; they will be calling at Miami in lieu of Port Everglades.

Agreement No.: 011852–007.

Title: Maritime Security Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; Australia-New Zealand Direct Line; China Shipping Container Lines, Co., Ltd.; Canada Maritime; CMA–CGM S.A.; Contship Container Lines; COSCO Container Lines Company, Ltd.; CP Ships (UK) Limited; Evergreen Marine Corp.; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited, LLC; A.P. Moller-Maersk A/S, trading under the name of Maersk Sealand; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Safmarine Container Line, NV; TMM Lines Limited, LLC; Zim Israel Navigation Co., Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority (MASSPORT); Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc. TraPac Terminals; Universal Maritime Service Corp.; and Virginia International Terminals.

Synopsis: The amendment adds OOCL (USA) Inc. as a Carrier Class member and Yusen Terminals, Inc. as a Marine Terminal Operator Class member.

Agreement No.: 011881.

Title: Zim/USL Space Charter Agreement.

Parties: U.S. Lines Limited and Zim Israel Navigation Company Ltd.

Synopsis: The agreement authorizes Zim to sell container space to U.S. Lines in the trade between China and the United States Atlantic Coast. The parties request expedited review.

Dated: May 14, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–11352 Filed 5–18–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320

Appendix A.1. Board-approved collection of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 19, 2004.

ADDRESSES: You may submit comments, identified by FR 4006 or FR 2046, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov*. Follow the instruction for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- Fax: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposeRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed forms and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle E. Long, Acting Federal Reserve Board Clearance Officer ((202) 452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Request for Extension of Time To Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted.

Agency form number: FR 4006.

OMB control number: 7100–0129.

Frequency: Annual.

Reporters: Banking Holding Companies.

Annual reporting hours: 180 hours.

Estimated average per response: 5 hours.

Number of respondents: 36.

General description of report: This information collection is mandatory (12 U.S.C. 1842(a) and 1843(c)(2)) and may be given confidential treatment upon request (5 U.S.C. § 552(b)(4)).

Abstract: Bank holding companies (BHCs) that have acquired voting securities or assets through foreclosure in the ordinary course of collecting a debt previously contracted (DPC) generally are required to submit the extension request annually for shares or assets that have been held beyond two years from the acquisition date. The extension request does not have a required format; BHCs submit the information in a letter. The letter contains information on the progress made to dispose of such shares or assets and requests permission for an extension to hold them. This extension request is required pursuant to the Board's authority under the Bank Holding Company Act of 1956 (the Act), as amended and Regulation Y. The Federal Reserve uses the information to fulfill its statutory obligation to supervise BHCs.

2. *Report title:* Report of Selected Balance Sheet Items for Discount Window Borrowers.

Agency form number: FR 2046.

OMB control number: 7100–0289.

Frequency: On occasion.

Reporters: Depository institutions.

Annual reporting hours: 575 hours.

Estimated average hours per response: 0.75 hours for primary and secondary credit borrowers; 0.25 hours for seasonal credit borrowers.

Number of respondents: 128.

General description of report: This information collection is mandatory (sections 10B, 11(a)(2), and 11(i) of the Federal Reserve Act (12 U.S.C. 347b(a) and 248(a)(2) and (i)) and individual respondent data are regarded as confidential (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve's Regulation A, ''Extensions of Credit by Federal Reserve Banks,'' requires that Reserve Banks review balance sheet data in determining whether to extend credit and in ascertaining whether undue use is made of such credit. Borrowers report certain balance sheet data for a period that encompasses the dates of borrowing.

Board of Governors of the Federal Reserve System, May 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11264 Filed 5–18–04; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 2, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

Elizabeth Ann Miller, Vero Beach, Florida; to retain voting shares of First Clay County Banc Corporation, Clay, West Virginia, and thereby indirectly retain voting shares of Clay County Bank, Clay, West Virginia.

Board of Governors of the Federal Reserve System, May 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11266 Filed 5–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Paul E. Menzel, Hartland, Wisconsin; to retain voting shares of Ridgestone Financial Services, Inc., Brookfield, Wisconsin, and thereby indirectly retain voting shares of Ridgestone Bank, Brookfield, Wisconsin.

Board of Governors of the Federal Reserve System, May 14, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11363 Filed 5–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Emigrant Bancorp, Inc., and ESB Acquisition Corp., both of New York, New York; to acquire 100 percent of the voting shares of Emigrant Bank, New York, New York.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Whitney Holding Corporation, New Orleans, Louisiana; to merge with Madison BancShares, Inc., Palm Harbor, Florida, and thereby indirectly acquire Madison Bank, Palm Harbor, Florida.

C. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Metropolitan Bank Group, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Citizens Bank –Illinois, National Association, Berwyn, Illinois.

Board of Governors of the Federal Reserve System, May 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11265 Filed 5–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000

Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Floridian Community Holdings, Inc., Davie, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Floridian Community Bank, Inc., Davie, Florida.

Board of Governors of the Federal Reserve System, May 14, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11362 Filed 5–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 16, 2004

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 16, 2004.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, May 11, 2004.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 04–11315 Field 5–18–04; 8:45 am]

BILLING CODE 6210–01–Sy

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–51–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Prevention Research Center Information System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). The Prevention Research Center Information System will collect in electronic format (a) data needed to measure progress toward, or achievement of, newly developed performance indicators, (b) information on Prevention Research Centers that is currently being reported in hard-copy documents, and (c) data on research projects that are currently submitted electronically via a spreadsheet.

Background

In 1984, Congress passed Public Law 98–551 directing the Department of Health and Human Services (DHHS) to establish Centers for Research and Development of Health Promotion and Disease Prevention. In 1986, CDC was given lead responsibility for this program, referred to now as the Prevention Research Centers program. Currently, CDC provides funding to 28 Prevention Research Centers (PRCs) selected through competitive peer review process and managed as CDC cooperative agreements. Awards are made for five (5) years and may be renewed through a competitive Request for Application (RFA) process. PRCs (which can be housed in a school of public health, medicine, or osteopathy) conduct multi-disciplinary, community-based, outcomes-oriented research on a broad range of topics related to health promotion and disease prevention.

In Spring 2003, CDC published RFA #04003 (FY20004–20009) for the Prevention Research Centers program. The RFA introduces a set of performance indicators that were developed collaboratively with the PRCs and other program stakeholders and are consistent with federal requirements that all agencies, in response to the Government Performance and Results Act of 1993, prepare performance plans and collect program-specific performance measures.

An Internet-based information system will allow CDC to monitor, and report on, PRC activities more efficiently. Data reported to CDC through the PRC information system will be used by CDC to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate the progress made in achieving center-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness.

The estimated annualized burden is 237 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Clerical	28	2	2.73
Directors	28	2	1.5

[1] Copies of the Minutes of the Federal Open Market Committee meeting on March 16, 2004, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Dated: May 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11276 Filed 5–18–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–52]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Dale Verell, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

CDC Model Performance Evaluation Program, OMB No. 0920–0274—Revision—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

In 1986, the Centers for Disease Control and Prevention (CDC) implemented the Model Performance Evaluation Program (MPEP) to evaluate the performance of laboratories conducting testing to detect human immunodeficiency virus type 1 (HIV–1) antibody (Ab), and to support CDC's mission of improving public health and preventing disease through continuously improving laboratory practices.

High-quality HIV–1 antibody testing is essential to meeting the public health objectives for the prevention and control of this retrovirus infection. High-quality CD4+ T–cell determinations and HIV–1 viral RNA (viral load) determinations are essential to HIV–infected patient care and management, and the mission of reducing retrovirus-associated morbidity and mortality. Prevention programs, diagnostic clinics, and seroprevalence studies rely not only on accurate antibody testing results to document HIV infection but also accurate CD4+ T–cell determinations and HIV–1 viral RNA determinations. The impetus for developing this program came from the recognized need to assess the quality of retroviral and AIDS-related laboratory testing and to ensure that the quality of testing was adequate to meet medical and public health needs. The objectives of the MPEP are to: (1) Develop appropriate methods for evaluating quality in laboratory testing systems (including test selection, sample collection, and reporting and interpreting test results); (2) develop strategies for identifying and correcting testing quality failures; and (3) evaluate the effect of testing quality on public health.

This external quality assessment program will be made available at *no cost* (for receipt of sample panels) to sites conducting testing to detect human immunodeficiency virus type 1 (HIV–1) antibody (Ab), CD4+ T–cell determinations, and HIV–1 viral RNA determinations. This program will offer laboratories/testing sites an opportunity for:

- Assuring accurate tests are being provided by the laboratory/testing site through external quality assessment;
- Improving testing quality through self-evaluation in a non-regulatory environment;
- Testing well characterized samples from a source outside the test kit manufacturer;
- Discovering potential testing problems so that procedures can be adjusted to eliminate them;
- Comparison of testing results with others at a national and international level; and
- Ability to consult with CDC staff to discuss testing issues.

There are no costs to respondents.

Form name	Number of respondents	Numbers of response per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Enrollments (new)	100	1	3/60	5
HIV Testing Survey	1,000	1	1	333*
CD4+ T-cell determinations Survey	325	1	30/60	54*
HIV–1 Ab PE Results Form	900	2	10/60	300
HIV–1 RNA PE Results Form	210	2	10/60	70
CD4+ T-cell determinations PE Results Form	300	2	10/60	100
Totals				862

*Both the HIV and the CD4+ T-cell determinations surveys are performed every other year; therefore, the total hour burden for these two surveys was divided by three to determine annualized hourly burden for the three-year approval period.

Dated: May 13, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11277 Filed 5–18–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Great Lakes Human Health Effects Research Program, Program Announcement Number 04023

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Great Lakes Human Health Effects Research Program, Program Announcement Number 04023.

Times and Dates: 1 p.m.–1:30 p.m., June 23, 2004 (Open); 1:30 p.m.–4:30 p.m., June 23, 2004 (Closed).

Place: National Center for Environmental Health/Agency for Toxic Substance Disease Registry, 1825 Century Boulevard, Atlanta, Georgia 30345, Teleconference Number 404.498.0632.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04023.

For Further Information Contact: J. Felix Rogers, Ph.D., M.P.H., CDC, National Center for Environmental Health/Agency for Toxic Substance Disease Registry, Office of Science, 1825 Century Boulevard, Atlanta, GA 30345, 404.498.0624.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11279 Filed 5–18–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10113]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. This is necessary to ensure compliance with provisions of Section 641 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

Section 641 of the MMA provides for the implementation of a demonstration under which Medicare would pay under Part B for drugs and biologicals that would not otherwise be covered until Part D is implemented in 2006. Drugs covered under this demonstration must be replacements for existing covered Medicare drugs and biologicals that are provided incident to a physicians service or are replacements for oral cancer drugs that are otherwise covered under Medicare Part B. Cost sharing under the demonstration is to be in the same manner as Medicare Part D. The statute also required that the demonstration begin 90 days after passage of the legislation, which was March 8, 2004. Due to the complexities of implementing this demonstration, we were unable to meet that deadline. However, because of the importance of this demonstration to beneficiaries with serious illnesses and the already delayed time frame, it is urgent that there not be further delay.

CMS is requesting OMB review and approval of this collection by May 28, 2004, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by May 25, 2004.

Type of Information Collection Request: New collection; *Title of Information Collection:* Application for Participation in Medicare Replacement Drug Demonstration; *Use:* Section 641 of the MMA mandated a demonstration that would pay for drugs/biologicals prescribed as replacements for existing covered Medicare drugs. A report to Congress evaluating the impact of this demonstration was also mandated. In order to enroll in this demonstration, a beneficiary will be required to submit the application forms. Beneficiaries who wish to be considered for a low income subsidy must also provide the information on the ''Application for Financial Assistance''; *Form Number:* CMS–10113 (OMB#: 0938–NEW); *Frequency: Other:* Other: once per beneficiary; *Affected Public:* Individuals or Households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 20,417.

We have submitted a copy of this notice to OMB for its review of these information collections.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be

mailed and/or faxed to the designees referenced below by May 25, 2004: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, CMS–10113, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; and, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, Desk Officer, Fax # 202–395–6974.

Dated: May 7, 2004.

John P. Burke, III,

Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–11334 Filed 5–18–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Connecticut's Medicaid State Plan Amendment 03–002A

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on June 8, 2004, at 10 a.m., JFK Federal Building, Room 2325, Boston, Massachusetts 02203–0003, to reconsider CMS' decision to disapprove Connecticut's Medicaid State Plan Amendment (SPA) 03–002A.

DATES: *Closing Date:* Requests to participate in the hearing as a party must be received by the presiding officer by June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the CMS' decision to disapprove Connecticut's Medicaid State Plan Amendment (SPA) 03–002A.

Connecticut submitted SPA 03–002A on February 13, 2003, which proposes to establish new pharmacy reimbursement rates for the period January 1, 2003, through February 4, 2003. The CMS reviewed this proposal and for the reasons set forth below, the Agency was unable to approve SPA 03–002A as submitted.

The sole issue is whether the requested effective date is consistent with statutory and regulatory requirements. In a separate action, CMS approved SPA 03–002B, which made the requested changes to pharmacy reimbursement rates for a subsequent period. Under section 1902(a)(30)(A) of the Social Security Act (the Act), states are required to have methods and procedures to ensure that rates are consistent with efficiency, economy, and quality of care. Under that authority, the Secretary has issued regulations prescribing state rate-setting procedures. One of those requirements, set forth at 42 CFR 447.205(d), is issuance of public notice prior to the effective date of a significant change in any methods and standards for setting payment rates for services. While the State indicated that a legislative hearing was held in February 2002, and that other activities occurred in the Connecticut General Assembly, the required public notice was not published in the Connecticut Law Journal until February 4, 2003. The regulations at 42 CFR 447.205(d) are quite specific that in order to meet the public notice requirements, a notice must be published in one of the following publications: (1) A state register similar to the **Federal Register**; (2) the newspaper of widest circulation in each city with a population of 50,000 or more; or (3) the newspaper of widest circulation in the state, if there is not a city with a population of 50,00 or more. Hearings and activities before a state legislature are not included in the regulation as meeting the requirements of public notice. Therefore, the change in pharmacy reimbursement rates contained in SPA 03–002A could not be effective until February 5, 2003.

Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Connecticut SPA 03–002A.

Section 1116 of the Act and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered.

If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Connecticut announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows: Mr. Michael Starkowski, Deputy Commissioner, State of Connecticut, Department of Social Services, 25 Sigourney Street, Hartford, CT 06106–5033.

Dear Mr. Starkowski:

I am responding to your request for reconsideration of the decision to disapprove State Plan Amendment (SPA) 03–002A.

Connecticut submitted SPA 03–002A on February 13, 2003, which proposes to establish new pharmacy reimbursement rates for the period January 1, 2003, through February 4, 2003. The Centers for Medicare & Medicaid Services (CMS) reviewed this proposal and for the reasons set forth below, the Agency was unable to approve SPA 03–002A as submitted.

The sole issue is whether the requested effective date is consistent with statutory and regulatory requirements. In a separate action, CMS approved SPA 03–002B, which made the requested changes to pharmacy reimbursement rates for a subsequent period. Under section 1902(a)(30)(A) of the Social Security Act, states are required to have methods and procedures to ensure that rates are consistent with efficiency, economy, and quality of care. Under that authority, the Secretary has issued regulations prescribing state rate-setting procedures. One of those requirements, set forth at 42 CFR 447.205(d), is issuance of public notice prior to the effective date of a significant change in any methods and standards for setting payment rates for services. While the State indicated that a legislative hearing was held in February 2002, and that other activities occurred in the Connecticut General Assembly, the required public notice was not published in the Connecticut Law Journal until February 4, 2003. The regulations at 42 CFR 447.205(d) are quite specific that in order to meet the public notice requirements, a notice must be published in one of the following publications: (1) A state register similar to the **Federal Register**; (2) the newspaper of widest circulation in each city with a population of 50,000 or more; or (3) the newspaper of widest circulation in the state, if there is not a city with a population of 50,000 or more. Hearings and activities before a state legislature are not included in the regulation as meeting the requirements of public notice. Therefore, the change in pharmacy reimbursement rates contained in SPA 03–002A could not be effective until February 5, 2003.

Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Connecticut SPA 02–003A.

I am scheduling a hearing on your request for reconsideration to be held on June 8, 2004, at 10 a.m., JFK Federal Building, Room 2325, Boston, Massachusetts 02203–0003. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. Ms. Kathleen Scully-Hayes may be reached at (410) 786–2055.

Sincerely,

Mark B. McClellan, M.D., Ph.D.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18). (Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–11268 Filed 5–18–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to Institute for American Values

AGENCY: Office of Planning, Research and Evaluation, ACF, HHS.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that the Office of Planning, Research and Evaluation will award grant funds without competition to the Institute for American Values. This grant is being awarded for an unsolicited proposal that conforms to the applicable program objectives, is within the legislative authorities and proposes activities that may be lawfully supported through grant mechanisms. This application is of outstanding merit and will have significant impact in focusing new public policy initiatives related to healthy marriage and contribute to better scholarly and public understanding of the issues, particularly related to the benefits of marriage for African Americans. The systematic review of academic findings published since 1990 will include studies with substantial rigor in order to address the existing inconclusive and often contradictory evidence presented in the current social science literature regarding the benefits of marriage for African Americans. The proposal presents a unique approach and includes a research team comprised of nationally recognized experts who will draw on the experience and knowledge of other nationally recognized experts in identifying the universe of scholarly publications to be considered and providing recommendations regarding variables to be considered and approaches for analysis.

The Institute for American Values is a nonpartisan organization devoted to contributing intellectually to the renewal of marriage and family life and the sources of competence, character, and citizenship.

The grant will support a 16-month project at a cost of $48,852 in federal support. The project is also being supported through non-federal funding sources.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–205–4829.

Dated: May 13, 2004.

Naomi Goldstein,

Acting Director, Office of Planning, Research and Evaluation.

[FR Doc. 04–11239 Filed 5–18–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements; Availability, etc: Amercian Indian and Native Alaskan Incremental Development Projects; Community Services Block Grant Program

Program Office Name: Office of Community Services.

Funding Opportunity Title: The Community Services Block Grant Program Community Economic Development Discretionary Grant Program—Priority Area: Incremental Development Projects—American Indian and Native Alaskan.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–ID–0023.

CFDA Number: 93.570.

Due Dates for Applications: The due date for receipt of applications is July 19, 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. Low-income beneficiaries include those who are determined to be living in poverty as determined by the HHS Guidelines on Poverty (See Appendix A), are 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. Under this priority area, the Office of Community Services (OCS) is particularly interested in receiving applications from urban and tribal American Indian and Alaskan Village community development corporations and other community development corporations (CDC) including faith-based ones.

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 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 support 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 Secretary of Agricultural or Housing and Urban Development.

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.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 (Public Law 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.

Project Goals

CED projects further HHS goals of strengthening American families and promoting their self-sufficiency and OCS goals of promoting healthy families in healthy communities. CED is particularly directed toward public-private partnerships that develop employment and business opportunities for low-income people and revitalize distressed communities.

Project Scope

Projects 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 which includes the low-income community to be served, business activities to be undertaken and the types of jobs to be created.

Priority Area

Community Economic Development Program

Priority Area: Incremental Development Projects (IDP)—American Indian and Native Alaskan

OCS will fund nonprofit Tribal, Urban Indian Centers or Alaska Native CDCs or nonprofit non-Indian CDCs that assist Indian tribes or Alaskan Native Communities in carrying out business development activities for their members; business startups, business expansions, development of new services or industries, and other newly-undertaken physical and commercial activities. If the CDC is non-Indian or non-Alaska Native, the application must reflect a significant partnership role for the tribe or community. The application must contain a written, signed agreement from an authorized tribal official confirming the tribe's significant involvement in the project. By entering into a partnership agreement with a tribe, the applicant will be considered to have fulfilled the goal of mobilizing non-discretionary program dollars and will be granted the maximum number of points in that category.

An eligible community development corporation applicant must submit a business plan that shows the economic feasibility of the venture. An applicant for an Incremental Development Project does not have to have in place all signed written commitments from other funding sources contributing to the project, but it must describe probable funding sources and any conditions under which they may be made available. In addition, an applicant for Incremental Development funds does not have to have in place all third party agreements but must describe needed third parties, their contributions and qualifications, and the feasibility of bringing them into the project. Letters of support from community stakeholders are welcome. An applicant must also clearly explain whether it has site control, and if not, the time period required to obtain site control.

OCS will support an Incremental Development Project under a cooperative agreement. A cooperative agreement is an award instrument of financial assistance used when substantial involvement is anticipated between OCS and the grantee during performance of the project. OCS will outline a plan of interaction with the grantee for implementation under the cooperative agreement. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of the project.

The duties and responsibilities of the applicant and ACF/OCS in fulfilling the Cooperative Agreement during each phase will include the following:

Responsibilities of the grantee:

- To implement activities described in the approved project description;
- Develop and implement work plans that will ensure that the services and activities included in the approved application address the goals and objectives of the approved project in an efficient, effective and timely manner;
- Submit regular semi-annual Financial Status (Standard Form 269) and progress reports that describe activities including, at a minimum, (a) information about the actions taken to implement the proposed project, and (b) the proposed plan for outcomes measurement and program evaluation of the activities supported with Federal funds.
- Work cooperatively and collaboratively with ACF officials, other Federal agency officials conducting related activities, and other entities or organizations contracted by ACF to assist in carrying out the purposes of the Community Economic Development Program; such cooperation and collaboration shall include, but not be limited to, providing requested financial and programmatic information, creating opportunities for interviews with agency officials and staff, and allowing on-site observation of activities supported under the cooperative agreement;
- Notify the Office of Community Services Project Officer if revisions are needed to the cooperative agreement;
- Consult with the Office of Community Services Project Officer in implementing the activities on an Ongoing and frequent basis during each phase of the project;
- Comply with Community Economic Development Program regulations (unless otherwise expressly waived in the approved application) and all other applicable Federal statutes and regulations in effect during the time that applicant is receiving grant funding;
- Notify the Office of Community Services Project Officer of any key personnel changes in writing;
- Ensure that the executive director and/or project director, and the evaluator are qualified to perform their responsibilities;
- Attend a two-day national workshop in Washington, DC. The workshop will be scheduled shortly after the effective date of the grant award. Additionally, the project director should plan annual meetings with their

program and grants management specialists each year, thereafter, during the life of the grant. The evaluator should also attend a final evaluation workshop to be held at the end of the project period. Project budgets must include funds from the OCS award for travel to and attendance at these meetings and workshops; and

Responsibilities of ACF/OCS:

- To provide consultation to the grantee with regard to the development of the work plan, approaches to address problems that arise, and identification of areas needing technical assistance;
- To consult with and to provide the grantee the data collection requirements of OCS, and to keep the grantee informed of policy developments as they affect the implementation of the project;
- To provide timely review, comment and decisions on significant project documents;
- To work together to address issues or problems with regard to the grantee's ability to carry out the full range of activities included in the approved application in the most efficient and effective manner;
- To promptly review written requests for approval of deviations from the project description or approved budget. Any changes which affect the terms and conditions of the grant award or revisions/amendments to the cooperative agreement or to the approved scope of activities will require prior approval by the ACF Grants Management Officer; and

An applicant requesting funding for an IDP must request the total amount of CED funding needed for the project on the SF424, Application for Federal Assistance. The maximum CED award for an IDP can be no more than $700,000 per project.

Applications that are exclusively for construction may have project periods of up to five years with continuation funding every twelve months. First year funding will be awarded for up to 20% of the requested total amount, not to exceed $140,000. The application must also include an incremental budget based on the design of the project for the four remaining years, not to exceed the balance of the total requested funding. A minimum of 2% of the award, or a minimum of $14,000, must be set aside for each continuation year.

Non-construction projects may have project periods of up to three years with continuation funding every twelve months. First year funding will be awarded for up to 20% of the total requested amount, not to exceed $140,000. The applicant must also include an incremental budget based on the design of the project for the two remaining years, not to exceed the balance of the total requested funding. A minimum of 2% of the award, or a minimum of $14,000, must be set aside for each continuation year.

Funding beyond the first 20% is dependent on a grantee's documenting (1) site control, (2) all of the non-CED funding required to complete the project and (3) referral sources. In addition, continuing funding will be subject to the availability of funds, satisfactory progress by the grantee on the project and a determination that continuation is in the best interests of the Federal Government. The decision to continue funding the project is at the sole discretion of OCS.

Applicants awarded a FY 2003 Incremental Development Project (IDP) grant cannot receive a second IDP grant until the first grant is significantly complete and has met most of its proposed goals and objectives. Particular attention will be paid to satisfying all job creation commitments.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Anticipated Total Priority Area Funding: $140,000 in FY2004.

Anticipated Number of Awards: 1–2.

Ceiling on Amount of Individual Awards: $700,000 per project period.

The first increment of an Incremental Development Project may not exceed $140,000. 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: None.

Average Projected Award Amount: $70,000 per initial budget period.

III. Eligibility Information

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.

An applicant must be a private, non-profit community development corporation (CDC). 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.

Additional Information on Eligibility

Applications that do not include proof of nonprofit status with their application will be disqualified.

Any non-profit organization submitted 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) 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) Or any of the items referenced 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. For American Indian Tribes and Alaska Native Villages, proof of non-profit status can also be documented by submitting a **Federal Register** listing as a Federally-recognized tribe.

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*.

Applicants that do not include proof of CDC status in the application will be disqualified.

An applicant must be a private, non-profit Community Development Corporation. 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 projects.

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.

2. Cost Sharing or Matching

None.

There is no cost sharing or matching requirement but most projects require significant funding in addition to the Federal CED funds so 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 a proposal.

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*.

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Suite 500 West, Washington, DC 20447, Email: *ocs@lcgnet.com,* Telephone: (800) 281–9519.

2. Content and Form of Application Submission

A. Application Content

Each application must include the following components:

1. Table of Contents.

2. Abstract of the Proposed Project—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.

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., include ''Priority Area 1 Operational Grant.''

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 and/or 424B, as applicable.

6. Project Narrative—A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.

B. Application Format

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.

C. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives, and business and work plans must not exceed 40 pages. The page limitation does not include Standard Forms and Assurances, Certifications, Disclosures, appendices and any supplemental documents as required in this announcement.

D. Required Standard Forms

Applicants must submit Standard Form (SF) 424, Request for Financial Assistance.

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424A, Assurances: Non-Construction Programs with their applications.

Applicants requesting financial assistance for a construction project must sign and return Standard Form 424B, Assurances: Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants must furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with all Federal statues 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.

3. Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on July 19, 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 Meyer Drive, Suite 300, Arlington, Virginia 22209 Attention: Daphne Weeden. 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 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209

Attention: Operations Center between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Operations Center''. 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.
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.
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.

Additional Forms: Private-non-profit organizations are encouraged to 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 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, 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

Cost Per Job

OCS will not fund projects with a cost-per-job in CED funds that exceeds $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 by 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 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.

Number of Projects in Application

Except for the retail development initiative, 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.

Pre-award costs will not be covered by an award.

6. Other Submission Requirements

Private Nonprofit Community Development Corporation

Applicants must provide proof of nonprofit status and proof of status as a community development corporation as required by statute and as described under ''Additional Information on Eligibility.''

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. 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 a third party are expended in compliance with Federal Regulations of 45 CFR, Part 74 and OMB Circular A–122.

Business Plan

Applications for Priority Area 3. Incremental Development Projects—Native Americans, 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:

(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) 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. 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. 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% 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' 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 and projected to be available;

(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.

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.

Third Party Agreements

Applicants submitting an application for funding under Priority Area 3, Incremental Development Projects—Native Americans, that proposes to use some or all of the requested CED funds to enter into a third party agreement are required to either submit the signed Third Party Agreement in the application, along with the business plan, for approval by OCS, or in the narrative, explain who the prospective third party (parties) would be and their contributions to the project. It should be noted that the portion of a 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.

From the grantee and third party:

Signatures of the authorized officials of the grantee and third party organization.

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 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.

Evaluation

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.

Competitive procurement regulations (45 CFR, Part 74, Section 74.40–74.48, especially Section 74.43) apply to service contracts such as those for evaluators.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Public Law 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.

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 Priority Area 3. Incremental Development Projects—Native Americans

Evaluation Criterion I: Approach (Maximum: 38 points)

The application describes the project, its scope and methods that will be used to ensure that the project results in employment and business development opportunities for low income individuals. (0–5 points)

The applicant has site control or the possibility of site control within 12 months. (0–5 points)

The work plan is results-oriented and related to job creation and business development opportunities for low income individuals. The application addresses the following: specific outcomes to be achieved; performance targets that the project is committed to achieving, including a discussion of and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, the level of support from the applicant organization; past performance in similar work; and specific resources contributed to the project that are critical to success. The project is able to be implemented soon after a grant award is made. (0–10 points)

The business plan meets the requirements of ''Part 6. Other Submission Requirements Business Plan.'' (0–5 points) Required financial documents are contained in the application and demonstrate that the project is viable if funding is leveraged as expected. (0–5 points) Where applicable, third party agreements meet the requirements of ''Part 6. Other Submission Requirements Third Party Agreements'' and can be expected to be executed within 12 months after receipt of a grant award. (0–8 points)

Evaluation Criterion II: Objectives and Need for Assistance (Maximum: 16 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. (0–3 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 provided in support of its contention. (0–3 points)

The application documents that the 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; a foundation supported community revitalization initiative. (0–3 points)

The application demonstrates a commitment to, or agreements with, local agencies to ensure that low-income individuals will be trained and placed in the newly created jobs. Low income individuals include welfare recipients, at-risk youth, displaced workers, public housing residents, persons who are homeless, persons with disabilities and custodial and non-custodial parents. The application provides written agreements from the local TANF, employment education and training office, and child support enforcement agency indicating what actions will be taken to integrate or coordinate services that relate directly to the project or a narrative that describes such agreements to be entered into. (0–3 points) The agreements include: (1) The goals and objectives that the applicant and the TANF, employment education and training office and/or child support enforcement agency expect to achieve through their collaboration. (2) The specific activities that will be undertaken to integrate or 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 or coordinating activities. (5) How those activities will be significant in relation to the goals

and objectives to be achieved through the collaboration. (6) How these activities will be significant in relation to their impact on the success of the OCS-funded project. (0–4 points)

Evaluation Criterion III: Results or Benefits Expected (Maximum: 16 points)

The application describes the business(es) that will be established or expanded as a result of the project. The applicant documents the number of jobs that will be created. (0–3 points)

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 CED funds. If the project involves construction or major renovation, the cost-per-job will not exceed $15,000 and the applicant demonstrates the need to exceed $10,000 per job. (0–3 points)

The application documents that the jobs to be created for low-income people have career development opportunities that will promote self-sufficiency. (0–2 points)

A non-Indian applicant submits a signed letter of agreement to participate in the Incremental Development Project—Native American by officials of the affected tribe. (0–8 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.

Evaluation Criterion IV: Organizational Profiles (Maximum: 15 points)

a. Organizational profile (sub-rating: 0–8 points)

The application demonstrates that the applicant has 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.

b. Staff skills and resources (sub-rating: 0–7 points)

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 applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. (0–3 points)

Evaluation Criterion V: Project Evaluation (Maximum: 10 points)

The application contains the outline of a project evaluation plan. The outline explains how the applicant proposes to answer key questions about how effectively the project is 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 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 the plan must include:

(1) An 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, and the effectiveness of the project in fostering self-sufficiency in low-income populations. (0–3 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 progress reports to OCS. These reports are expected to 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 are relevant to the proposed project. (0–3 points)

(3) The identity and qualifications of the proposed third-party evaluator, if not selected at the time of application, the qualifications which will be sought in choosing an evaluator. The evaluator must have knowledge about and experience in conducting process and outcome evaluations in the business development or job creation field and have a thorough understanding of the range and complexity of the problems faced by the target population. It is important that the 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 in order for the evaluator to 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. OCS must approve selection of a third party evaluator. (0–2 points)

(4) Process for completing a final evaluation design and plan, in collaboration with the approved evaluator and OCS, during the six-month start-up period of the project. Applicants should ensure that the evaluation design is consistent with the project design, identifying key project assumptions about the target populations and their needs; hypotheses, or expected cause-effect relationships, to be tested in the project; and the proposed project activities, or interventions, that will address needs in ways that will lead to self-sufficiency. The design 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. (0–2 points)

Evaluation Criterion VI: Budget and Budget Justification (Maximum: 5 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. (0–2 points)

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)

The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–1 point)

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. Incomplete applications, including applications that do not originate from a nonprofit Native American CDC or a non-Indian CDC with a signed partnership agreement with the affected Indian tribe, 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 for Non-Construction Projects, or signed Standard Form 424B Budget Information for Construction Projects. These forms must be completed according to instructions provided in this Program Announcement and must be signed by an official of the applicant organization who has legal authority to obligate the organization. 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 forth in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt and community development corporation 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, including compliance with programmatic and financial reporting requirements; 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

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 awarded, the terms and conditions of the award, the effective date of the award, the budget period for which support is granted, and the total project period for which support is contemplated. The Financial Assistance Award will be signed and issued via postal mail by an authorized Grants Officer.

2. Administrative and National Policy Requirements

45 CFR Part 74.

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

Debra Brown, Office of Community Services, 370 L'Enfant Promenade, SW., Suite 500 West, Aerospace Building, Washington, DC 20447–0002, Email: *ocs@lcgnet.com,* Telephone: (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, Email: *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 11, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–11236 Filed 5–18–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Funding Opportunity: The Community Services Block Grant Program Community Economic Development Discretionary Grant Program—Priority Area: Incremental Development Projects

AGENCY: Administration for Children and Families, Office of Community Services.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–ID–0022.

CFDA Number: 93.570.

Due Date for Applications: The due date for applications is July 19, 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 incremental development project funds to eligible Community Development Corporations (CDCs) that do not have in place written commitments for all projected non-OCS funding, project operations and site control for their

planned 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 (See Appendix A). 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.

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, including religious 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 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.

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://www.hhs.aspe.gov/poverty/.*

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 (Public Law 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.

Project Goals

Community Economic Development (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 the 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.

Community Economic Development Program

Priority Area: Incremental Development Projects (IDP)

Pursuant to this Program Announcement, OCS will award funds to eligible CDCs that do not have in place written commitments for all projected non-OCS funding, project operations and site control for their planned economic development project.

Community Economic Development Program funds for Priority Area: Incremental Development 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. Low income beneficiaries of such projects include those who are determined to be living in poverty as determined by the Health and Human Services (HHS) Guidelines of Poverty (See Appendix A). They may be unemployed, on public assistance, including Temporary Assistance for Needy Families (TANF), or at risk teenagers, custodial and non-custodial parents, public housing residents, persons with disabilities and persons who are homeless. Grant funds under this priority area 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.

An eligible applicant must submit a business plan that shows the economic feasibility of the venture.

An applicant for an IDP must have: (1) All written commitments need not be in place; (2) All non-OCS funding necessary to complete the project need not be in place; (3) Third party agreements need not be in place (if applicable); and (4) Acquisition or site control need not be in place.

OCS will support an IDP under a cooperative agreement. A cooperative agreement is an award instrument of financial assistance used when substantial involvement is anticipated between OCS and the grantee during performance of the project. OCS will outline a plan of interaction with the grantee for implementation under the cooperative agreement. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of the project.

The duties and responsibilities of the applicant and ACF/OCS in fulfilling the Cooperative Agreement during each phase will include the following:

Responsibilities of the grantee:

- To implement activities described in the approved project description;
- Develop and implement work plans that will ensure that the services and activities included in the approved application address the goals and objectives of the approved project in an efficient, effective and timely manner;
- Submit regular semi-annual Financial Status (Standard Form 269) and progress reports that describe activities including, at a minimum, (a) information about the actions taken to implement the proposed project, and (b) the proposed plan for outcomes measurement and program evaluation of the activities supported with Federal funds.
- Work cooperatively and collaboratively with ACF officials, other Federal agency officials conducting related activities, and other entities or organizations contracted by ACF to assist in carrying out the purposes of the

Community Economic Development Program; such cooperation and collaboration shall include, but not be limited to, providing requested financial and programmatic information, creating opportunities for interviews with agency officials and staff, and allowing on-site observation of activities supported under the cooperative agreement;

• Notify the Office of Community Services Project Officer if revisions are needed to the cooperative agreement;

• Consult with the Office of Community Services project officer in implementing the activities on an on-going and frequent basis during each phase of the project;

• Comply with Community Economic Development Program regulations (unless otherwise expressly waived in the approved application) and all other applicable Federal statutes and regulations in effect during the time that applicant is receiving grant funding;

• Notify the Federal Project Officer of any key personnel changes in writing;

• Ensure that the executive director and/or project director, and the evaluator attend a two-day national workshop in Washington, DC. The workshop will be scheduled shortly after the effective date of the grant award. Additionally, the project director should plan annual meetings with their program and grants management specialists each year, thereafter, during the life of the grant. The evaluator should also attend a final evaluation workshop to be held at the end of the project period. Project budgets must include funds from the OCS award for travel to and attendance at these meetings and workshops; and

Responsibilities of ACF/OCS:

• To provide consultation to the grantee with regard to the development of the work plan, approaches to address problems that arise, and identification of areas needing technical assistance;

• To consult with and to provide the grantee the data collection requirements of OCS, and to keep the grantee informed of policy developments as they affect the implementation of the project;

• To provide timely review, comment and decisions on significant project documents;

• To assist in resolving issues or problems with regard to the grantee's ability to carry out the full range of activities included in the approved application in the most efficient and effective manner;

• To promptly review written requests for approval of deviations from the project description or approved budget.

• To assist in evaluation of any proposed subcontractors who will perform substantive work under this project.

An applicant requesting funding for an IDP must request the total amount of CED funding needed for the project on the SF424, Application for Federal Assistance. The maximum CED award for an IDP can be no more than $700,000 per project.

Applications that are exclusively for construction may have project periods of up to five years with continuation funding every twelve months. First year funding will be awarded for up to 20% of the requested total amount, not to exceed $140,000. The application must also include an incremental budget based on the design of the project for the four remaining years, not to exceed the balance of the total requested funding. A minimum of 2% of the award, or a minimum of $14,000, must be set aside for each continuation year.

Non-construction projects may have project periods of up to three years with continuation funding every twelve months. First year funding will be awarded for up to 20% of the total requested amount, not to exceed $140,000. The applicant must also include an incremental budget based on the design of the project for the two remaining years, not to exceed the balance of the total requested funding. A minimum of 2% of the award, or a minimum of $14,000, must be set aside for each continuation year.

Funding beyond the first 20% is dependent on a grantee's documenting (1) site control, (2) all of the non-CED funding required to complete the project and (3) referral sources. In addition, continuing funding will be subject to the availability of funds, satisfactory progress by the grantee on the project and a determination that continuation is in the best interests of the Federal Government. The decision to continue funding the project is at the sole discretion of OCS.

Applicants awarded a FY 2003 Incremental Development Project (IDP) grant cannot receive a second IDP grant until the first grant is significantly complete and has met most of its proposed goals and objectives. Particular attention will be paid to satisfying all job creation commitments.

Applicants awarded a FY 2002 or FY 2003 Incremental Development Project (IDP) award cannot receive a second IDP award until the first project is complete and has met most of its proposed goals and objectives. Particular attention will be paid to satisfying all job creation commitments.

Furthermore, applicants that have not completed a previously awarded IDP award are not eligible to receive another IDP award during the one year period following the end of the project period of the last IDP grant award.

II. Award Information

Funding Instrument Type: Cooperative Agreements (See Section I above for a description of Federal involvement in the cooperative agreements).

Anticipated total Priority Area Funding: $1,120,000 in FY2004.

Anticipated Number of Awards: 8—10.

Ceiling on Amount of Individual Awards: $700,000 per project.

The first increment of an Incremental Development Project may not exceed $140,000. 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: None.

Average projected Award Amount: $112,000 per initial budget period.

III. Eligibility Information

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.

An applicant must be a private, non-profit Community Development Corporation (CDC). 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.

Additional Information on Eligibility:

Applications that do not include proof of nonprofit status with their application will be disqualified.

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) 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) or any of the items referenced 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.

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/forms.htm*. Participation of lack of participation in the survey will not affect an applicant's score or otherwise affect ACF's funding decisions.

Applicants that do not include proof of CDC status in the application will be disqualified.

An applicant must be a private, non-profit Community Development Corporation. 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 projects.

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.

2. *Cost Sharing or Matching:* None.

There is no cost sharing or matching requirement but most economic development projects require significant funding in addition to the federal CED funds so 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 a proposal.

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

Office of Community Services, Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, Email: *ocs@lcgnet.com*, Telephone: (800) 281–9519.

2. Content and Form of Application Submission

A. Application Content

Each application must include the following components:

1. Table of Contents.

2. Abstract of the Proposed Project—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.

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.

4. Standard Form 424A—Budget Information-Non-Construction Programs.

5. Standard Form 424B—Assurances-Non-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.

B.Application Format

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.

Each application should include one signed original and two additional copies.

C. 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.

An application that exceeds the page limitation will be considered ''non-responsive'' and be returned to the applicant without further review.

D. Required Standard Forms

Applicants must submit a signed Standard Form 424, Application for Federal Assistance, Standard Form 424A Budget Information—Non-Construction Projects, and Standard Form 424B Assurances—Non-Construction Programs.

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.

3. Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on July 19, 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, 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.

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., Eastern Standard Time (EST), at the U.S. Department of Health and Human Services (HHS), 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: Operations Center''. Applicants are responsible for 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 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	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Survey for Private, Non-Profit Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Abstract of Proposed Project	Identifies 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.
Completed Standard From 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.

Additional Forms: Private-non-profit organizations are encouraged to 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/forms.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, 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-five 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

Cost Per Job

OCS will not fund projects with a cost-per-job in CED funds that exceeds $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 by 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 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.

Number of Projects in Application

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.

Pre-award costs will not be covered by an award.

6. Other Submission Requirements

Private Nonprofit Community Development Corporation

Applicants must provide proof of nonprofit status and proof of status as a community development corporation as required by statute and as described under ''Additional Information on Eligibility.''

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. 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.

Business Plan

Applicants for Priority Area 2. Incremental Development Projects, 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:

(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) 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. 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. 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% 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. 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:

(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.

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.

Third Party Agreements

Applicants submitting an application for funding under Priority Area 2, Incremental Development Projects that proposes 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 signed Third Party Agreements in the application, if available and executed by the time of submission of the application along with the business plan, for approval by OCS.

While Third Party Agreements need not be in place at the time of the application, following are requirements for these agreements.

It should be noted that the portion of a 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.

Evaluation

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.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Public Law 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.

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. Include 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 explains 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 Priority Area—Incremental Development Projects

Evaluation Criterion I: Approach (Maximum: 30 Points)

a. The business plan is 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 creation of jobs will occur during the project period. (0–20 points)

b. The applicant has site control. (0–1 points)

c. Executed third party agreements meet the requirements set forth above. (0–2 points)

d. The required financial documents are contained in the application, clearly describe proposed use of CED funds and demonstrate the project is viable. (0–7 points)

Evaluation Criterion II: Organizational Profiles (Maximum: 20 Points)

a. Organizational profile.

The application demonstrates that the applicant has 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)

b. 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)

c. The application documents adequate facilities and resources (*i.e.* space and equipment) to successfully carry out the work plan. (0–3 points)

d. 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)

a. 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)

b. Community empowerment and coordination.

Application documents that the 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)

c. 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)

d. 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)

a. 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 are equal to or greater than the state or national level. (0–5 points)

b. 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)

c. 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:

a. 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)

b. 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 be relevant to the proposed project. (0–2 points)

c. The identity and qualifications of the proposed third-party evaluator, 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)

d. 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 may be shared without waiting for the final evaluation report.

e. For all of the above stated reasons, it is important that each successful applicant have a third-party evaluator selected and are 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 of, 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, Sections 74.40–74.48, especially Section 74.43) apply to service contracts such as those for evaluators.

It is suggested that applicants use no more than three (3) 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)

a. Mobilization of resources:

The application documents the applicant 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.

b. 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 applicant provides 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 agreement includes: (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 also 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)

a. Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. (0–2 points)

b. 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)

c. The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–1 point)

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 ''SF–424'', a Standard Form 424-A Budget Information ''SF–424A'' and signed Standard Form 424B Assurance—Non-Construction Programs ''SF–424B'' 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 forth in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt and CDC statuses 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 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 (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

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 awarded, the terms and conditions of the award, the effective date of the award, the budget period for which funds are awarded, and the total project period for which support is contemplated. The Financial Assistance Award is signed and issued via postal mail by an authorized Grants Officer.

2. *Administrative and National Policy Requirements:* 45 CFR Part 74.

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.

VII. Agency Contacts

Program Office Contact: Debbie Brown, Office of Community Services, 370 L'Enfant Promenade, SW., Aerospace Building 5th Floor West, Washington, DC 20447, Email: *ocs@lcgnet.com,* Telephone: (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 4th Floor West, Washington, DC 20447–0002. Email: *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 11, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–11238 Filed 5–18–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Funding Opportunity: The Community Services Block Grant Program Community Economic Development Discretionary Grant Program—Priority Area: Planning Projects

AGENCY: Administration for Children and Families, Office of Community Services.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–ED–0026.

CFDA Number: 93.570.

Due Date for Applications: The due date for receipt of applications is July 19, 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 planning grants to Community Development Corporations (CDCs) that are less than three years old or inexperienced in implementing economic development projects. The primary purpose of this Priority Area is to assist eligible CDCs in planning, developing organizational capacity, identifying potential projects, mobilizing resources and developing a business plan to implement a 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 (See Appendix A). 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.

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 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.

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.

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://www.hhs.aspe.gov/poverty/

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 (Public Law 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.

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

Planning grants may include three to five feasibility studies covering business startups, business expansions, development of new products and services, and other newly-undertaken

physical and commercial activities. Projects must result in a business plan that will provide for employment and business opportunities for low-income individuals. Each applicant must describe the project scope including the low-income community to be served, and capacity building activities to be undertaken.

Priority Area: Community Economic Development Program (CED)

Priority Area: Planning Projects (PP)

Pursuant to this Program Announcement, OCS will award grants to CDCs that are inexperienced in implementing economic development projects. The primary purpose of this priority area is to assist eligible CDCs in planning, developing organizational capacity, identifying potential projects, mobilizing resources and developing a business plan to implement a project.

Eligible applicants cannot be more than three years old, or if more than three years old, have no experience in implementing economic development projects. (For the latter type of applicant, a written assurance must be provided in the project narrative that states ''The applicant has no previous participation in economic development projects.'') The phrase ''no previous participation in economic development projects'' means an eligible applicant has not sponsored nor had any significant participation in projects that have provided employment or business development opportunities through business startups, expansions or development provision of financial services. In addition, applicants with housing experience must not have had primary responsibility in planning, developing, and managing housing projects.

Under this priority area, applicants may incur costs to: (a) Evaluate the feasibility of potential economic development projects (b) Develop a business plan related to a chosen project; (c) Mobilize resources for the chosen project; and (d) Develop organizational capacity. Examples of activities under item (d) are hiring staff, training board members and staff, recruiting community volunteers and developing management information systems.

The maximum CED award for a Planning Project cannot exceed $75,000, including the cost of travel for the program director to attend a two-day workshop in Washington, DC. The project and budget period can be no longer than 12 months. The result of a planning project is a business and work plan for a specific project for which the applicant may seek other Priority Area funds.

II. Award Information

Funding Instrument Type: Grants.

Anticipated total Priority Area Funding: $750,000 in FY 2004.

Anticipated Number of Awards: 10–12.

Ceiling on amount of individual Awards: $75,000 per budget/project period.

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.

Floor of Individual Award Amounts: None.

Average projected Award Amount: $75,000 per budget/project period.

Project Periods for Awards: 12 months.

III. Eligibility Information

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

Other Faith-based Organizations

An applicant must be a private, non-profit Community Development Corporation (CDC) less than three years old or inexperienced 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.

Additional Information on Eligibility: Applicants that do not include proof of nonprofit status in the application will be disqualified.

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 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; or any of the items referenced 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.

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/forms.htm*. Participation or lack of participation with this survey will not affect your application score nor your chance of receiving an award.

Applications that do not include proof of CDC status in the application will be disqualified.

An applicant must be a private, non-profit Community Development Corporation. 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 projects.

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.

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.

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

Office of Community Services, Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, Email: *OCS@lcgnet.com,* Telephone: (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—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.

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.

4. Standard Form 424A—Budget Information-Non-Construction Programs.

5. Standard Form 424B—Assurances-Non-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.

2. Application Format

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.

Each application should include one signed original and two additional copies.

3. 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.

An application that exceeds the page limitation specified will be considered ''non-responsive'' and be returned to the applicant without further review.

4. Required Standard Forms

Applicants must submit completed and signed SF 424 Application for Federal Assistance, SF 424A Budget Information—Non-Construction Programs, and Standard Form 424B, Assurances: Non-Construction Programs.

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 SF 424 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 SF 424 and need not mail the application back with the application.

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 *http://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 *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

3. Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on July 19, 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 Meyer Drive, Suite 300, Arlington, Virginia 22209 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.

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 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209 Attention: Operations Center, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Operations Center''. 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 and will not be considered. 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	Identifies 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.
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.
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.

What to submit	Required content	Required form or format	When to submit
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.
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 are encouraged to 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 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-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.

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

Sub-Contracting or Delegating Projects

OCS will not fund 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 implement 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.

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.

Pre-award costs will not be covered by an award.

6. Other Submission Requirements

Private Nonprofit Community Development Corporation

Applicants must provide proof of nonprofit status and proof of status as a community development corporation as required by statute and as described under ''Additional Information on Eligibility.''

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. 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.

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.

Evaluation

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.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Public Law 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 following information collections are included in the program announcement: 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.

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

Evaluation Criteria for Review and Evaluation of Applications Submitted Under Priority Area 4—Planning Projects

Evaluation Criterion I: Approach (Maximum: 35 Points)

The application describes the project, feasibility studies it proposes to conduct and organizational capacity building it proposes to undertake. (0–5 Points)

The work plan is results-oriented and related to conducting feasibility studies that address job creation and business development opportunities for low-income individuals. The applicant addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including a discussion of how project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, the level of support from the applicant organization; past performance in similar work; and specific resources contributed to the project that are critical to success. The planning project is able to be implemented soon after a grant award is made. (0–15 Points)

The work plan outlines realistic quarterly time schedules of work tasks by which the objectives (including the development of organizational capacity, a business plan and mobilization of resources) will be accomplished not withstanding any such potential problems. (0–5 Points)

The narrative describes the basis on which the applicant will determine the feasibility of a project and the determination of whether to pursue a business plan. (0–5 points)

The work plan describes critical issues or potential problems that might impact negatively on the project and it indicates how the project objectives will be attained despite these issues or problems. (0–5 points)

Evaluation Criterion II: Results and Benefits Expected (Maximum: 25 Points)

The applicant will conduct three to five feasibility studies of business development opportunities that may result in viable, full time permanent jobs. (0–5 points)

The proposed businesses are in stable or growth industries that can be sustained over the long term in the community. (0–5 points)

The business plan expected as a result of this project looks to be feasible based on the organizational capability and experience of the applicant's

organization, management and/or staff. (0–5 points)

The applicant demonstrates capacity to mobilize resources from the private sector, public resources, corporations and foundations, if the proposed project is implemented. (0–10 points)

Evaluation Criterion III: Objectives and Need for Assistance (Maximum: 10 Points)

The applicant 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 of community are equal to or greater than the state or national level. The applications 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 provided in support of its contention. (0–7 points)

The applicant documents that it 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 privately supported community revitalization initiative. (0–3 points)

Evaluation Criterion IV: Objectives and Need for Assistance (Maximum: 15 Points)

a. Organizational Profiles

The applicant demonstrates that it has the management capacity, organizational structure and successful record of accomplishment relevant to community development and that it has the ability to mobilize other financial and in-kind resources. (0–10 points)

b. Staff Skills and Resources

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)

Evaluation Criterion V: Evaluation (Maximum: 10 Points)

The application includes a self-evaluation component that describes criteria to be used to evaluate project results and explain the methodology to be used to determine whether criteria are met. (0–5 points)

The application defines procedures to be employed to determine whether the project is being conducted consistent with the work plans. (0–5 points)

Evaluation Criterion VI: Budget and Budget Justification (Maximum: 5 Points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and the objectives of the project. (0–5 Points)

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 ''SF–424'', a Standard Form 424–A Budget Information ''SF–424A'' and signed Standard Form 424B Assurance— Non-Construction Programs ''SF–424B'' 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 and CDC statuses 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 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 (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.

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.

VI. Award Administration Information

1. *Award Notices:* 90 days after the due date of applications.

2. *Administrative and National Policy Requirements:* 45 CFR Part 74.

3. *Reporting.*

Programmatic Reports: Semi-annually with final report due 90 days after project end date.

Financial Reports: Semi-annually with final report due 90 days after project end date.

Special Reporting Requirements: None.

VII. Agency Contacts

Program Office Contact: Debbie Brown, Office of Community Services, 370 L'Enfant Promenade, SW, Aerospace Building 5th Floor West, Washington, DC 20447, Email: *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 4th Floor West, Washington, DC 20447–0002. Email: *bziegler-johns1@acf.hhs.gov.* Telephone: (202) 401–4646.

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 11, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–11237 Filed 5–18–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0045]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Health and Diet Survey—2004 Supplement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 18, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Health and Diet Survey—2004 Supplement

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)). The ''Health and Diet Survey—2004 Supplement'' will provide FDA with information about consumers' knowledge of dietary fats and the risk of coronary heart disease as well as consumers' attitudes toward diet, health, and physical activity. A total of 2,200 adults in the 50 States and the District of Columbia will be interviewed by telephone. Participation will be voluntary. The survey will collect information concerning the following items: (1) Knowledge of the relationships between the risk of heart disease and dietary fats, including saturated fat, trans fatty acids, hydrogenated oil, omega-3 fatty acids, monounsaturated fats, and polyunsaturated fats; (2) attitudes toward diet, health, and physical activity; and (3) demographics and health status.

The agency has established specific targets to improve consumer understanding of diet-disease relationships, and in particular, the relationships between dietary fats and the risk of coronary heart disease, the leading cause of death in the United States. FDA intends to evaluate and track consumer understanding of heart-healthy and heart-harmful fats (saturated fat, trans fatty acids, and omega-3 fatty acids) as initial outcome measures of its achievement in improving public health. The primary purpose of the information collected in the survey will be to gauge current levels of consumer understanding. The establishment of a baseline of consumer understanding will be useful for the development of performance indicators to identify and measure incremental improvement in consumer understanding. A secondary purpose of the information will be to increase the agency's understanding of consumers' attitudes toward diet, health, and physical activity. This information will provide insight for the exploration of effective communication strategies and messages to assist consumers in making informed dietary and lifestyle choices.

In the **Federal Register** of February 18, 2004 (69 FR 7642), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	27	1	27	0.5	13.5
Screener	6,000	1	6,000	0.02	120

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Activity	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Survey	2,000	1	2,000	0.17	340
Survey (''initial refusers'')	200	1	200	0.08	16
Total					490

[1] There are no capital costs or maintenance and operating costs for this collection of information.

These estimates are based on FDA's experience with previous consumer surveys. Prior to the administration of the survey, the agency plans to conduct a pretest of the final questionnaire to examine and reduce potential problems in survey administration The pretest will be conducted in three waves, each with nine respondents. The agency will use a screener to select an eligible adult respondent in each household to participate in the survey. Target sample size of the survey is 2,000 respondents who complete the interview. The agency, as part of an effort to increase survey participation, plans to re-contact and complete the interview with prospective respondents who refuse to participate at initial contacts. Two hundred of those who refuse for the second time, defined as ''initial refusers,'' will be administered a shorter interview about their knowledge of saturated fat, trans fatty acids, omega-3 fatty acids, and the risk of coronary heart disease.

Dated: May 12, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11251 Filed 5–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0204]

Agency Information Collection Activities; Proposed Collection; Comment Request; Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's patent term restoration regulations on due diligence petitions for regulatory review period revision. Where a patented product must receive FDA approval before marketing is permitted the Patent and Trademark Office (PTO) may add a portion of FDA's review time to the term of a patent petitioners may request reductions in the regulatory review time if FDA marketing approval was not pursued with ''due diligence.''

DATES: Submit written or electronic comments on the collection of information by July 19, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions (21 CFR Part 60)—(OMB Control Number 0910–0233—Extension)

FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 and the Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drugs, animal drugs, human, biological, medical device, food additive, or color additive products regulated by FDA must undergo FDA safety, or safety and effectiveness, review before marketing is permitted. Where the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent. In enacting 35 U.S.C. 156, Congress sought to encourage development of new, safer, and more effective medical and food

additive products. It did so by authorizing PTO to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years, and is calculated by PTO based on a statutory formula. When a patent holder submits an application for patent term extension to PTO, that agency requests information from FDA, including the length of the regulatory review period for the patented product. If PTO concludes that the product is eligible for patent term extension, FDA publishes a document in the **Federal Register**, which describes the length of the regulatory review period, and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with ''due diligence. '' The statute defines due diligence as ''that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period. '' As provided in § 60.30(c), a due diligence petition ''shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence. '' Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petitioner not satisfied with FDA's decision regarding the petition may, under § 60.40 (21 CFR 60.40), request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

Since 1992, seven requests for revision of the regulatory review period have been submitted under § 60.24. Three regulatory review periods have been altered. Two due diligence petitions have been submitted to FDA under § 60.30. There have been no requests for hearings under § 60.40 regarding the decisions on such petitions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Part	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60.24(a)	7	1	7	100	700
60.30	2	0	2	50	100
60.40	0	0	0	0	0
Total					800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 12, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11252 Filed 5–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0179]

Agency Information Collection Activities; Proposed Collection; Comment Request; New Animal Drug Application, FDA Form 356 V

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for sponsors submitting a new animal drug application (NADA), for marketing a drug for animal use.

DATES: Submit written or electronic comments on the collection of information by July 19, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA, (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the proposed collection of information, FDA invites comments on these topics: (1) Whether

the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Animal Drug Application, FDA Form 356 V—21 CFR Part 514 (OMB Control Number 0910–0032)—Extension

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act), for the approval of new animal drugs that are safe and effective. Section 512(b) of the act (21 U.S.C. 360b(b)), requires that a sponsor submit and receive approval of an NADA, before interstate marketing is allowed. The regulations implementing statutory requirements for NADA approval have been codified under part 514 (21 CFR part 514). NADA applicants generally use a single form, FDA 356V. The NADA must contain, among other things, safety and effectiveness data for the drug, labeling, a list of components, manufacturing and controls information, and complete information on any methods used to determine residues of drug chemicals in edible tissues. While the NADA is pending, an amended application may be submitted for proposed changes. After an NADA has been approved, a supplemental application must be submitted for certain proposed changes, including changes beyond the variations provided for in the NADA and other labeling changes. An amended application and a supplemental application may omit statements concerning which no change is proposed. This information is reviewed by FDA scientific personnel to ensure that the intended use of an animal drug, whether as a pharmaceutical dosage form, in drinking water, or in medicated feed, is safe and effective. The respondents are pharmaceutical firms that produce veterinary products and commercial feed mills.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.1 and 514.6	190	7.39	1405	211.6	297,298
514.8	190	7.39	1405	30	42,150
514.11	190	7.39	1405	1	1,405
Total burden hours					340,853

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the burden hours required for reporting are based on fiscal year 2003 data. The burden estimate includes original NADAs, supplemental NADAs and amendments to unapproved applications.

Dated: May 12, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11253 Filed 5–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0228]

Guidance for Industry on Fixed Dose Combination and Co-Packaged Drug Products for Treatment of HIV; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Fixed Dose Combination and Co-Packaged Drug Products for Treatment of HIV.'' This guidance is intended to encourage sponsors to develop fixed dose combinations (FDC) and co-packaged products for the treatment of human immunodeficiency virus (HIV) infection. The availability of combination products may help to improve patient adherence to and facilitate distribution programs for treatment regimens for HIV.

DATES: Submit written or electronic comments on the draft guidance by July 19, 2004. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Debra B. Birnkrant, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301 827–2330.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Fixed Dose Combination and Co-Packaged Drug Products for Treatment of HIV.'' This guidance is intended to encourage the development of fixed dose combination (FDC) and co-packaged products for the treatment of human immunodeficiency virus (HIV). The guidance addresses the agency's current thinking regarding the types of information that should be provided in an application seeking approval for an

FDC or co-packaged product for the treatment of HIV.

Combination therapy is essential for the treatment of HIV/AIDS. At least three active drugs, usually from two different classes, are required to suppress the virus, allow recovery of the immune system, and reduce the emergence of HIV resistance. In the United States and developing countries, simplified HIV regimens in the form of co-packaged drugs (such as blister packs) or FDCs may facilitate distribution of antiretroviral therapies and improve patient adherence to the regimens.

Although there are more than 20 unique antiretroviral drugs approved in the United States, only a few are approved for use as FDC products, and none are approved as co-packaged products. Some antiretrovirals should not be combined due to overlapping toxicities and potential viral antagonism. Other antiretrovirals should not be used in pregnant women and other special populations. It is important, therefore, that possible combinations of these products be evaluated for safety and efficacy in the various populations that may have need of them.

Recently, newer FDCs that have not been approved by FDA have received attention, and some are being promoted for use in resource poor nations where HIV/AIDS has reached epidemic proportions. These FDCs may offer cost advantages and allow simplified dosing because all three drugs are in one pill. However, the safety, efficacy, and quality of these products have not been evaluated by FDA. Products whose safety, efficacy, and quality do not conform to expected standards may pose a threat to individual patients by increasing the chances of substandard performance, which may lead not only to treatment failure, but also to the development and spread of resistant virus.

FDA is prepared to move swiftly to evaluate such products when applications for them are submitted for approval. This guidance seeks to clarify what regulatory requirements would be applied to such applications, what issues might be of concern, and how these should be addressed. Different considerations apply depending on whether a sponsor owns or has a right of reference to all of the data required to support an application or a sponsor plans to rely on literature or the FDA's findings of safety and effectiveness for an approved drug. Where appropriate, this guidance addresses the issues associated with these different scenarios.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on FDC and co-packaged products for treating HIV infection. 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 statutes and regulations.

II. Comments

Interested persons may submit written comments on the guidance to the Division of Dockets Management (see **ADDRESSES**). Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 14, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–11364 Filed 5–17–04; 11:05 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0050]

Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Dandruff Control Ingredient; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of eligibility; request for data and information; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to August 16, 2004, the comment period for the safety and effectiveness review of piroctone olamine, 0.05 percent to 0.5 percent and 0.1 percent to 1.0 percent, for use as a dandruff control single active ingredient in leave-on and rinse-off dosage forms, respectively. FDA published a notice of eligibility and call-for-data for safety and effectiveness data and information on piroctone olamine in the **Federal Register** of February 18, 2004. FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to submit data and information on the safety and effectiveness of piroctone olamine as a dandruff control single active ingredient.

DATES: Submit data, information, and general comments by August 16, 2004.

ADDRESSES: Submit written comments, data, and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments, data, and information to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 18, 2004 (69 FR 7652), FDA published a notice of eligibility and call-for-data for safety and effectiveness information on piroctone olamine, 0.05 percent to 0.5 percent and 0.1 percent to 1.0 percent, for use as a dandruff control single active ingredient in leave-on and rinse-off dosage forms, respectively. FDA requested that all data, information, and general comments be submitted by May 18, 2004.

II. Extension of Time

On April 16, 2004, Keller and Heckman LLP, on behalf of Clariant GmbH, requested a 90-day extension beyond the May 18, 2004, deadline for the submission of safety and effectiveness data concerning piroctone olamine (Ref. 1). The request stated that additional time is needed to assemble a comprehensive submission for this ingredient. FDA considers an extension of time for submission of data, information, and general comments concerning the safety and effectiveness of piroctone olamine to be in the public interest. Accordingly, FDA is extending the comment period for 90 days to August 16, 2004, as requested.

III. Comments

Interested persons should submit comments, data, and general information to the Division of Dockets Management (see **ADDRESSES**) by August 16, 2004. Submit three copies of all

comments, data, and information. Individuals submitting written information, or any individuals or entities submitting electronic comments, may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

IV. Marketing Policy

Under § 330.14(h), any product containing the conditions for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

V. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT1.

Dated: May 12, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11248 Filed 5–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0326]

International Cooperation on Harmonization of Technical Requirements for Approval of Veterinary Medicinal Products; Final Guidance for Industry on Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#149) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing'' (VICH GL33). This guidance has been developed by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This guidance outlines a recommended testing approach to assure human food safety following the consumption of food products derived from animals treated with veterinary drugs.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the 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*. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: *lmulliga@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; the FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the Government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Guidance on General Testing

In the **Federal Register** of September 4, 2002 (67 FR 56570), FDA published the notice of availability of the VICH draft guidance, giving interested persons until October 4, 2002, to submit comments. After consideration of comments received, the draft guidance was changed in response to the comments and submitted to the VICH Steering Committee. At a meeting held on October 10 and 11, 2002, the VICH Steering Committee endorsed the final guidance for industry, VICH GL33.

Existing toxicological testing recommendations for veterinary drugs have evolved from the toxicological tests for human medicines, food additives, and pesticides. The following guidance was developed to include tests particularly relevant to the identification of a no-observable adverse effect level (NOAEL) for veterinary drugs. The scope of this guidance is to identify the following tests: (1) Basic tests recommended for all new animal drugs used in food-producing animals in order to assess the safety of drug residues present in human food; (2)

additional tests recommended based on specific toxicological concerns associated with the structure, class, mode of action, etc., of the drug; and (3) special tests that might be useful in the evaluation of the relevance or the interpretation of data obtained in the basic or additional tests.

III. Significance of Guidance

This document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH documents have been substituted with ''should.''

This guidance document represents the agency's current thinking to establish the safety of veterinary drug residues in human food in a variety of toxicological evaluations. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

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 or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Copies of the guidance document entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing'' (VICH GL33) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: May 13, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11254 Filed 5–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request; NIH Customer/Partner Satisfaction Survey of Modification in Procedures for Applications and Awards of Research Project Grants

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of Extramural Research, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The proposed information collection was previously published in the **Federal Register** on May 23, 2002, page 36202. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, any information that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NIH Customer/Partner Satisfaction Survey of Modification in procedures for Applications and Awards of Research Project Grants.

Type of Information Collection Request: New request.

Need and Use of Information Collection: The information collected in these surveys will be used by the Office of Extramural Research to evaluate the re-engineering initiative, including the Modular Grant Application Process and initiatives under the NIH Roadmap Initiative, intended to facilitate application and award of Federal assistance programs administered by the NIH Modular Applicant/Grant process has been in effect for two years. At the outset of its implementation, the community was advised that the process would reduce administrative burden by focusing the efforts of investigators, institutional officials, and National Institutes of Health (NIH) staff on the science of the application. The NIH now believes it is an appropriate time to determine if these objectives have been met.

Frequency of Response: On occasion.

Affected Public: Institutional Officials, Principal Investigators (PI's), Peer Reviewers, Program and Grants Management Staff, Institute Budget Officers.

The annual reporting burden is as follows:

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: .334.

Estimated Total Burden Hours Requested: 334. Each year we will repeat the same survey with different respondents. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Anthony Demsey, OD, NIH, Building 1, Room 152, Bethesda, MD 20892–7974, or call non-toll-free number (301) 496–0232, or e-mail your request, including your address to: *Demseya@od.nih.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if

received within 30-days of the date of this publication.

Charles Mackay,

Chief, Project Clearance Branch, OPERA, OER, National Institutes of Health.

[FR Doc. 04–11358 Filed 5–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 National Advisory Council for Complementary and Alternative Medicine.

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 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: June 4, 2004.

Closed: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1 p.m. to adjournment.

Agenda: The agenda includes opening remarks by the Director, NCCAM, report from the Cancer Working Group, overview of National Center for Health Statistics, summary of CDC Advanced Date Report: CAM Module, update on co-sponsorship of Program Announcements, and other business of the Council.

Place: Natcher Conference Center, 9000 Rockville Pike, 45 Center Drive, Conference Rooms E1 and E2, Bethesda, MD 20892.

Contact Person: Jane F. Kinsel, PhD, M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

The public comments session is scheduled from 3:40 p.m.–4 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–496–6701, fax: 301–480–0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later that 5 p.m. on May 25, 2004. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to 10 calendar days (June 14, 2004) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institues of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–496–6701, fax: 301–480–0087, or via e-mail at *naccames@mail.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.

Dated: May 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–11357 Filed 5–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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 of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–52, Review of R13s.

Date: June 7, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george hauschnih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–53, Review applications in response to RFA DE04–009, Exploratory & Develop Grants in Clinical Research.

Date: June 22, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental and Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm. 4AN32E, Bethesda, MD 20892, (301) 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–11354 Filed 5–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting.

Name of Committee: NIH Recombinant DNA Advisory Committee (RAC).

Dates: June 8–9, 2004.

Times: June 8, 2004, 8 a.m. to 6 p.m., June 9, 2004, 8 a.m. to 6 p.m.

Agenda: Review of human gene transfer protocols for use of: (1) Inactivated *Saccharomyces cerevisiae* expressing three different mutated Ras oncoproteins in subjects with solid tumors that express mutated Ras; (2) a plasmid-delivered myelin basic protein (hMBP) cDNA given either alone or with atorvastatin in subjects with multiple sclerosis; (3) an AAV-vector based product in subjects with alpha-1 antitrypsin deficiency; (4) the SERCA2a gene administered during Ventricular Assist Device support in subjects with heart failure; and (5) the intravesical delivery of a conditionally replicating oncolytic adenovirus after failure of Bacillus Calmette-Guerin failure in transitional cell carcinoma of the bladder. The RAC meeting also includes the Data Management report and an update on OBA protocol 0104–488 entitled: ''A phase I open-label clinical trial of the safety and tolerability of single escalating doses of autologous CD4 T cells transduced with VRX496 in HIV positive subjects'' presented by Dr. Boro Dropulic VIRxSYS Corporation, Gaithersburg, Maryland.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Stephen M. Rose, Ph.D., Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *sr8j@nih.gov.*

This notice is being published less than 15 days prior to the meeting date because of scheduling problems with presenters at the meeting.

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: *http://www4.od.nih.gov/oba*, where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loam Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–11355 Filed 5–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Member SEP #2.

Date: May 19, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Basic Gerontology.

Date: June 7–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7843, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering-Digestive Diseases.

Date: June 7, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering-Respiratory Diseases.

Date: June 8, 2004.

Time: 12 pm. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: June 10–11, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Jay Cinque, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alcohol and Behavioral Genetics (Member Conflicts).

Date: June 10, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Etiology Study Section.

Date: June 14–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Victor A. Fund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892, 301–435–3504, *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB–H 50R: Bioengineering Research Partnerships.

Date: June 14, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, 301–435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.

Date: June 14–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Syed M. Amir, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBTS 10B: Small Business: Cardiovascular Devices.

Date: June 14–15, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.

Date: June 14–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: June 14, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Clinical and Integrative Gastrointestinal Pathobiology Study Section.

Date: June 14–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Mushtaq A. Khan, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435,1778, *khanm@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Cell and Molecular Biology Study Section.

Date: June 14, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC. 2401 M Street, NW., Washington, DC 20037.

Contact Person: Najama Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@crs.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gastrointestinal Mucosal Pathobiology: Quorum.

Date: June 14, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Peter J. Perrin PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301–435–0682, *perrinp@crs.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1SBIB–H(50)R Innovations in Biomedical Computational Science and Technology.

Date: June 14, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1259, *petrosia@crs.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, ZRG1 MEDI 90S: Medical Imaging: Bone/Cartilage.

Date: June 14, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, 301–435–1179, *bradleye@crs.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology Study Section.

Date: June 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites Georgetown, 2505 Wisconsin Ave NW., Washington, DC 20007.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–1151, *pyperj@crs.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date: June 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1718, *kelseym@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: June 15–16, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.

Date: June 15–16, 2004.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBSTS 50R:Bioengineering Nanotechnology Initiative.

Date: June 15, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.

Date: June 16–17, 2004.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–435–1784, *mcfarlag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Innovation Research—Respiratory Sciences.

Date: June 16, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal C. Sharma, DVM, MS, PhD., Diplomate American Board of Toxicology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1763, *sharmag@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: June 16–17, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gerald L Becker, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *beckerg@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, ZRG1 CBSS (01) Cancer biomarkers.

Date: June 16–18, 2004.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Mary Bell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, (301) 435–8754, *bellmar@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 04–11353 Filed 5–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–H–02 (S) Seasonal Reproductive Neuroendocrinology.

Date: May 18, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301)–435–1245, *marcusr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: June 6–8, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverase@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroscience and Disease Study Section.

Date: June 7–8, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1253, *armstrda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacteriophage T7.

Date: June 8, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center For Scientific Review Special Emphasis Panel, E. Coli Topoisomerace.

Date: June 8, 2004.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Sensory, Motor and Cognitive Neuroscience.
Date: June 9, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.
Date: June 9–10, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Doyle, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.
Date: June 9–10, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7818, Bethesda, MD 20892, (301) 594–1321, *diramig@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.
Date: June 9–10, 2004.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metabolics Technology Development.
Date: June 9–11, 2004.
Time: 7:30 p.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Ray Bramhall, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046 F, MSC 7892, Bethesda, MD 20892, (910) 458–1871, *bramhalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Myocardial Ischemia and Metabolism.
Date: June 10–11, 2004.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Genetics.
Date: June 10–11, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.
Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7804, Bethesda, MD 20892, (301) 435–2398, *zouzhiq@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.
Date: June 10–11, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.
Date: June 10–11, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.
Date: June 10–11, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.
Date: June 10–11, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Integrative Clinical Endocrinology & Reproduction, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 6168, MSC 7892, Bethesda, MD 20892, (301 435–1042, *shaikha@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.
Date: June 10–12, 2004.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 3.
Date: June 10–11, 2004.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspg@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.
Date: June 10–11, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194,

MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: June 10–11, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Chronic Diseases Study Section.

Date: June 10–11, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Scott Osborne, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Synapses, Channels, and Transporters Study Section.

Date: June 10–11, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Lafayette Square, 806 15th Street, Washington, DC 20005.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Risk Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.

Date: June 10–11, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Community Influences on Health Behavior.

Date: June 10–11, 2004.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave, NW., Washington, DC 2005.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Biostatistical Methods and Research Design Study Section.

Date: June 11, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, IMM Fellowship Reviews.

Date: June 11, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, T35 Short Term Training Applications.

Date: June 11, 2004.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sandy Warren, MPH, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7843, Bethesda, MD 20892, (301) 435–1019, *warrens@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–11356 Filed 5–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on 21 Substances, Mixtures and Exposure Circumstances Proposed for Listing in the Report on Carcinogens, Twelfth Edition

Background

The National Toxicology Program (NTP) announces its intent to review additional agents, substances, mixtures and exposure circumstances for possible listing in the Report on Carcinogens (RoC), Twelfth Edition that is scheduled for publication in 2006. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the NTP by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, DHHS shall publish a report, which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens, and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

A nomination recommended for review in the RoC is evaluated initially by the NIEHS/NTP RoC nomination review committee, composed of scientists from the NIEHS/NTP staff, to determine if the information available for a nomination indicates the criteria for listing can be applied and warrants formal consideration by the NTP. The scientific review of a nomination involves three separate scientific reviews: two Federal review groups and one non-government peer review body (a subcommittee of the NTP Board of Scientific Counselors) that meets in an open, public forum. Throughout the review process, multiple opportunities are provided for public input including comment at the public meeting of the NTP Board RoC Subcommittee. In reviewing nominations for the RoC, all available data and public comments are considered in the application of the criteria for inclusion or removal of candidate agents, substances, mixtures

or exposure circumstances or for a change in a candidate's classification.

The criteria used in the review process and a detailed description of the review procedures, including the steps in the current formal review process, can be obtained from the NTP Web site at *http://ntp-server.niehs.nih.gov* (see Report on Carcinogens) or can be obtained by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3118, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov.*

Public Comment Requested

The following table identifies the 21 nominations that the NTP may consider for review in 2004 or 2005, as either a new listing in or changing the current listing in the Twelfth Report. These nominations are provided with their Chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. Additional nominations for the Twelfth Report or modifications to the nominations in the attached table may be identified and would be announced in future **Federal Register** notices. The NTP solicits public input on these 21 nominations and asks for relevant information concerning their carcinogenesis, as well as current production data, use patterns, or human exposure information. The NTP also invites interested parties to identify any scientific issues related to the listing of a specific nomination in the RoC that they feel should be addressed during the reviews. Comments concerning these nominations for listing in or changing the current listing in the Twelfth Report on Carcinogens will be accepted for a period of 60 days from the publication date of this announcement in the **Federal Register**. Individuals submitting public comments are asked to include relevant contact information (name, affiliation (if any), address, telephone, fax, and e-mail). Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

Additional Nominations Encouraged

The NTP solicits and encourages the broadest participation from interested individuals or parties in nominating agents, substances, or mixtures for review for the Twelfth and future RoCs. Nominations should contain a rationale for review. Appropriate background information and relevant data (*e.g.*, journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.), which support the review of a nomination, should be provided or referenced when possible. Contact information for the nominator should also be included (name, affiliation (if any), address, telephone, fax, and e-mail). Nominations should be sent to Dr. Jameson's attention at the address given above.

Dated: May 10, 2004.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 2004–2005 FOR POSSIBLE LISTING THE REPORT ON CARCINOGENS, TWELFTH EDITION

Nomination to be reviewed/CAS No.	Primary uses or exposures	Nominated by	Basis for nomination
Aristolochia-Related Remedies	Several Aristolochia Herbal species (notably *A. contorta, A. debilis, A. fangchi* and *A. manshuriensis*) have been used in traditional Chinese medicine as anti-rheumatics, as diuretics, in the treatment of edema and for other conditions such as hemorrhoids, coughs and asthma.	NIEHS [1]	Herbal remedies containing the plant genus *Aristolochia:* IARC [2] finding of sufficient evidence of carcinogenicity in humans (Vol. 83, 2002).
Aristolochic Acid	Aristolochic acid, the principle extract from Aristolochia, is a mixture of nitrophenanthrene carboxylic acids.	NIEHS [1]	Naturally occurring mixtures of aristolochic acids: IARC [2] finding of sufficient evidence of carcinogenicity in animals and limited evidence in humans (Vol. 83, 2002).
Asphalt fumes	Asphalt is a petroleum product used in paving and roofing operations. Asphalt fumes are a cloud of small particles generated from the gaseous state after volatilization of asphalt aggregates.	John Schelp of NAACP-Durham Chapter.	Human epidemiological studies have reported an increased risk in lung cancer among workers exposed to asphalt fumes and asphalt fumes caused skin tumors in experimental animals. Additionally, known human carcinogens (PAHs) have been found in asphalt fumes.
Atrazine (192–24–9)	Atrazine is an herbicide used to control grass and broad-leaved weeds. Atrazine has been detected at levels that exceeded or approached the MCL for atrazine in 200 community surface drinking water system.	NIEHS [1]	IARC [2] finding of sufficient evidence of carcinogenicity in animals (Vol. 73, 1999).

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 2004–2005 FOR POSSIBLE LISTING THE REPORT ON CARCINOGENS, TWELFTH EDITION—Continued

Nomination to be reviewed/CAS No.	Primary uses or exposures	Nominated by	Basis for nomination
Benzofuran (271–89–6)	Benzofuran is produced by isolation from coal-tar oils. Benzofuran is used in the manufacture of coumarone-indene resins, which harden when heated and are used to make floor titles and other products.	NIEHS [1]	Results of a NTP bioassay (TR 370, 1989) that reported clear evidence of carcinogenicity in male and female mice and some evidence of carcinogenicity in female rats.
Captafol (2425–06–01)	Captafol is a fungicide that has been widely used since 1961 for the control of fungal diseases in fruits, vegetables and some other plants. Use of captafol in the United States was banned in 1999.	NIEHS [1]	IARC [2] finding of sufficient evidence of carcinogenicity in animals (Vol. 53, 1991). IARC also noted that captafol is positive in many genetic assays, including the *in-vivo* assay for dominant lethal mutation.
Cobalt/Tungsten-Carbide Hard Metal Manufacturing.	Hard-metals are manufactured by a process of powder metallurgy from tungsten and carbon (tungsten carbide), and small amounts of other metallic compounds using cobalt as a binder. Hard metals are used to make cutting and grinding tools, dies, and wear products for a broad spectrum of industries including oil and gas drilling, and mining.	NIEHS [1]	Recent human cancer studies on the hard metal manufacturing industry an association between exposure to hard metals (cobalt tungsten-carbide) and lung cancer.
Di (2-ethylhexyl) phthalate (DEHP) (117–81–7).	DEHP is mainly used as a plasticizer in polyvinyl chloride (PVC) resins for fabricating flexible vinyl products. PVC resins have been used to manufacture toys, dolls, vinyl upholstery, tablecloths and many other products.	Jun Ki-Chul, President of Aekyung Petrochemical Co., LTD of Seoul, Korea (for delisting).	Currently listed in the RoC as reasonably anticipated to be a human carcinogen. IARC reclassification as not classifiable as to its carcinogenicity to humans (Group 3) (Vol. 73, 2000). IARC stated that there is sufficient evidence for the carcinogenicity in experimental animals; however, the mechanism for liver tumor involves peroxisome proliferation that is not relevant to humans.
Etoposide in combination with cisplatin and bleomycin.	Etoposide in combination with cisplatin and bleomycin is used to treat testicular germ cell cancers.	NIEHS [1]	IARC [2] finding of sufficient evidence of carcinogenicity in humans (Vol 76, 2000).
Etoposide (33419–42–0)	Etoposide is a DNA topoisomerase II inhibitor used in chemotherapy for non-Hodgkin's lymphoma, small-cell lung cancer, testicular cancer, lymphomas and a variety of childhood malignancies.	NIEHS [1]	IARC [2] finding of limited evidence of carcinogenicity in humans (Vol. 76, 2000).
Glass wool (respirable size): Two nominations: (1) Insulation glass wool fibers (2) Special purposes glass fibers.	The major uses of glass wool are in thermal, electrical, and acoustical insulation, weatherproofing, and filtration media. In 1980, approximately 80% of the glass wool produced for structural insulation was used in houses. Special purpose fibers are used for high-efficiency air filtration media, and acid battery separators.	North American Insulation Manufacturers Association nominated glass wool (respirable size) for delisting. Special purpose glass wool fibers: NIEHS [1].	Glass wool (respirable size) is currently listed in the RoC as reasonably anticipated to be a human carcinogen. Insulation glass wool: IARC [2] finding of limited evidence of carcinogenicity in animals and evaluation as not classifiable as to its carcinogenicity to humans (Group 3) (Vol. 81, 2002). Special-purpose glass fibers: IARC [2] finding of sufficient evidence of carcinogenicity in animals (Vol. 81, 2002).

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 2004–2005 FOR POSSIBLE LISTING THE REPORT ON CARCINOGENS, TWELFTH EDITION—Continued

Nomination to be reviewed/CAS No.	Primary uses or exposures	Nominated by	Basis for nomination
Metalworking Fluids	Metal working fluids are complex mixtures that may contain mixtures of oil, emulsifiers, anti-weld agents, corrosion inhibitors, extreme pressure additives, buffers biocides and other additives. They are used to cool and lubricate tools and working surfaces in a variety of industrial machining and grinding operations.	NIEHS [1]	Recent human cancer studies of metal working fluid that show an association between exposure to these materials and cancer at several tissue sites.
otho-Nirotoluine (88–72–2)	ortho-Nitrotoluene is used to synthesize agricultural and rubber chemicals, azo and sulfur dyes, and dyes for cotton, wool, silk, leather, and paper.	NIEHS [1]	Results of a NTP bioassay (TR 504, 2002), which reported clear evidence of carcinogenicity in rats and mice.
Oxazepam (604–75–1)	Oxazepam is a benzodiazepine used extensively since the 1960s for the treatment of anxiety and insomnia and in the control of symptoms of alcohol withdrawal.	NIEHS [1]	Results of a NTP bioassay (TR 443, 1993), which reported clear evidence of carcinogenicity in male and female mice.
Riddelliine (232476–96–0)	Riddelliine is found in a class of plants growing in western United States. Cattle, horses and sheep ingest these toxic plants. Residues have been found in, milk, and honey.	NIEHS [1]	Results of a NTP bioassay (TR 508, 2003), which reported clear evidence of carcinogenicity in male and female rats and mice.
Styrene (100–42–5)	Styrene is used in the production of polystyrene, acrylonitrile-butadiene-styrene resins, styrene-butadiene rubbers and latexes, and unsaturated polystyrene resins.	Lorenzo Tomatis	IARC [2] finding of limited evidence of carcinogenicity in animals and limited evidence of carcinogenicity in humans (Vol. 82, 2002).
Talc Two nominations (1) Cosmetic talc (2) Occupational exposure to talc.	Talc occurs in various geological settings around the world. Exposure to general population occurs through use of products such as cosmetics. Occupational exposure occurs during mining, milling and processing.	NIEHS [1]	The NTP deferred consideration of listing talc (asbestiform and non-asbestiform talc) in the 10th RoC because its 2000 review of talc found confusion in the scientific literature over the mineral nature of talc. Given the confusion over defining exposure to talc based on asbestiform fibers, the NPT has decided that the most appropriate approach would be to characterize talc exposure as cosmetic talc and occupational exposure to talc. The basis for the review of talc is as follows: Cosmetic talc: Human epidemiological studies reporting an increased risk of ovarian cancer among women using talc for personal use. Occupational exposure to talc: Human epidemiological studies reporting an increase risk of cancer among workers exposed to talc.
Teniposide (29767–20–2)	Teniposide is a DNA toposiomerase II inhibitors used mainly in the treatment of adult childhood leukemia.	NIEHS [1]	IARC [2] finding of limited evidence of carcinogenicity in humans (Vol. 76, 2000).

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 2004–2005 FOR POSSIBLE LISTING THE REPORT ON CARCINOGENS, TWELFTH EDITION—Continued

Nomination to be reviewed/CAS No.	Primary uses or exposures	Nominated by	Basis for nomination
Vinyl Mono-Halides as a class	Vinyl halides are used in the production of polymers and copolymers. Vinyl bromide is mainly used in polymers as a flame retardant and in the production of monoacrylic fibers of carpet-backing materials. Vinyl Chloride is used to produce polyvinyl chloride and copolymers. Vinyl Fluoride is used in the production of polyvinyl fluoride, which when laminated with aluminum, steel and other materials is used as a protective surface for the exteriors of residential and commercial buildings.	NIEHS[1]	Vinyl Fluoride and Vinyl Bromide are currently listed in the RoC as reasonably anticipated to be a human carcinogen and Vinyl Chloride is currently listed in the RoC as known to be a human carcinogen in the Report on Carcinogens. Vinyl Mono-Halides: Structural similarities and common mechanisms of tumor formation.

[1] The National Institute of Environmental Health Sciences (NIEHS).
[2] International Agency for Research on Cancer (IARC).

[FR Doc. 04–11359 Filed 5–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intercity Bus Security Grant Program: Application Notice Describing the Program and Establishing the Closing Date for Receipt of Applications Under the Intercity Bus Security Grant Program

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice inviting applications under the Intercity Bus Security Grant Program.

SUMMARY: The purpose of the Intercity Bus Security Program is to improve security for intercity bus operators and passengers.

The Intercity Bus Security Grant Program improves security for operators and passengers by providing bus security enhancements and training to bus companies and others. Competitive grant funding is used to address a wide variety of security needs including driver protection, tracking and communications with over-the-road buses, passenger and baggage screening, security assessments and/or development of security plans, and training for transportation personnel to recognize and respond to criminal attacks and terrorist threats. The grants will also fund physical security enhancements such as fencing, lighting, and surveillance equipment at locations where buses are parked and maintained. Funds in the amount of $9,900,000 appropriated from Public Law 108–90, ''Department of Homeland Security Appropriations Act, 2004,'' are being awarded under the Intercity Bus Security Grant Program.

DATES: Applications must be received by Wednesday, July 7, 2004, 4 p.m. eastern daylight saving time.

ADDRESSES: Information about this funding opportunity and the application material are available through the TSA Internet site at *http://www.tsa.gov* under Industry Partners (select Maritime and Land Security Grants, then Intercity Bus Security Grants) and at *http://www.fedgrants.gov*. A paper copy of the application forms and instructions may be obtained by calling Elizabeth Dorfman at 571–227–2190 or by sending a written request to Elizabeth Dorfman. See contact information below for address.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dorfman, Office of Maritime and Land Security, TSA–8, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone: (571) 227–2190, e-mail: *Elizabeth.dorfman@dhs.gov*.

SUPPLEMENTARY INFORMATION: Total anticipated funding available for the Intercity Bus Security Grant Program is $9,900,000. Awards under this program are subject to the availability of funds.

Issued in Arlington, Virginia, on May 17, 2004.

Marianna L. Merritt,

Chief of Staff, Office of Maritime and Land Security, Transportation Security Administration.

[FR Doc. 04–11428 Filed 5–17–04; 1:51 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–17]

Conference Call for the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. This meeting is open to the general public with participation.

DATES: The conference call will be held on Monday, June 7, 2004, from 11 a.m. to 3 p.m.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can log onto NFPA's website for instructions on how to participate and for contact information for the conference call: *http://www.nfpa.org/ECommittee/HUDManufacturedHousing/hudmanufacturedhousing.asp.* Alternately you may contact Jill McGovern of NFPA by phone at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of the Deputy Assistant Secretary for Regulatory

Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this conference call is to discuss the Consensus Committee's review and recommendations to the Secretary on the draft Proposed Installation Standards.

Tentative Agenda

A. Roll Call.

B. Welcome and Opening remarks.

C. Public testimony.

D. Department's response to the Manufactured Housing Consensus Committee letter of February 17, 2004, regarding section 604(b) of the Act.

E. Task group recommendations on proposed rule—

1. Review of proposed rule; and,
2. Subcommittee recommendations for MHCC response.

F. Full committee meeting and take actions on Task Group recommendations.

G. Adjournment.

Dated: May 6, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–11249 Filed 5–18–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–043–1220–PA]

Notice of Emergency Off-Road Vehicle (ORV), Also Referred to as Off-Highway Vehicle (OHV), Travel Limitations and Closures Pursuant to Regulations at 43 CFR 8341.2 on Public Lands in the Ely Field Office, Duck Creek Basin

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately, off road vehicles (ORV) are restricted on selected public lands administered by the Bureau of Land Management (BLM), Ely Field Office within the Duck Creek Basin. ORV's will be limited to designated roads and trails in the Duck Creek Basin on an interim basis. The BLM is temporarily closing roads on public land to be consistent with the Duck Creek travel management plan map. This action will allow BLM, Ely Field Office to address concerns related to unrestricted cross-country travel in the specific places where resources are now damaged. The Duck Creek Basin is critical habitat for mule deer, elk and peregrine falcons. The purpose of the emergency interim measure is to wildlife habitat, rangeland resources, soil, vegetation, cultural resources, recreation habitat and other resources from imminent adverse impacts from ORV use. Exemptions from this restriction will apply for BLM authorized permittees, official Nevada State business and BLM law enforcement. The authorized officer may make other exemptions to this restriction on a case-by-case basis. This restriction will remain in effect until BLM completes a land use plan amendment or revision for OHV management.

FOR FURTHER INFORMATION CONTACT: Jack Tribble, Lead Outdoor Recreation Planner, Bureau of Land Management, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301, e-mail *jtribble@blm.gov*, telephone (775) 289–1800.

SUPPLEMENTARY INFORMATION: As an interim measure, BLM is joining the U.S. Forest Service, Nevada State Division of Wildlife, user groups and public citizens in implementing travel restriction decisions of the White Pine County Coordinated Resource Management Steering Committee (WPCRM). The Committee's travel restriction decisions were based on citizen lead Technical Review Team's recommendations that analyzed resource concerns and user demands over a two-year period. The travel limitations and road closures shall not be construed as a limitation on BLM's future planning and off-highway vehicle route designations. The referenced map is available for review at the above address.

The authority for this restriction and closure is 43 CFR 8341.2 and 43 CFR 8341.1. Violations of this restriction and closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: November 7, 2003.

Jeffrey A. Weeks,

Assistant Field Manager, Ely Field Office (NV–040).

Editorial Note: This document was received at the Office of the Federal Register on May 14, 2004.

[FR Doc. 04–11275 Filed 5–18–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Adoption of an Interim 602(a) Storage Guideline for Management of the Colorado River

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of adoption of an interim 602(a) storage guideline for management of the Colorado River.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation has prepared a final environmental assessment (EA) for adoption of an interim 602(a) storage guideline for management of the Colorado River. The Secretary of the Department of the Interior (Secretary), acting through the Bureau of Reclamation, proposed the adoption of an interim 602(a) storage guideline that would assist the Secretary in making a determination of the quantity of water considered necessary as of September 30 of each year, as required by article II(1) of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs pursuant to the Colorado River Basin Project Act of September 30, 1968. *See* 68 FR 56317 (September 30, 2003).

We are notifying the public that a Finding of No Significant Impact (FONSI) on the proposed guideline was approved by Bureau of Reclamation Regional Directors Rick L. Gold and

Robert W. Johnson on March 17 and March 18, 2004, respectively. The text of the FONSI is provided below.

FOR FURTHER INFORMATION CONTACT: Copies of the final EA and FONSI are available from Tom Ryan, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Salt Lake City, Utah 84138–1147; telephone (801) 524–3732; faxogram (801) 524–5499; e-mail: *tryan@uc.usbr.gov*. The final EA and FONSI are also available on Reclamation's Web site at *http://www.usbr.gov/uc/library/* (click on Environmental Assessment Documents or Finding of No Significant Impact Documents).

Copies of the EA and FONSI are also available for public review and inspection at the following locations:

- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7239, Salt Lake City, Utah 84138–1147
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225–0007
- Bureau of Reclamation, Main Interior Building, Room 7060–MIB, 1849 C Street, NW, Washington, DC 20240–0001

Dated: April 16, 2004.

Connie L. Rupp,

Assistant Regional Director—UC Region, Bureau of Reclamation.

Finding of No Significant Impact

Adoption of an Interim 602(a) Storage Guideline

I. Introduction

The Secretary of the Interior, acting through the Bureau of Reclamation (Reclamation), has proposed the adoption of an interim 602(a) storage guideline that will assist the Secretary of the Interior in making a determination of the quantity of water considered necessary as of September 30 of each year to assist in implementation of and as required by Article II(1) of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Long-Range Operating Criteria) pursuant to the Colorado River Basin Project Act of September 30, 1968. See 68 FR 56317 (September 30, 2003).

Section 602(a) of the Colorado River Basin Project Act (codified at 43 U.S.C. 1552(a)), requires that the Secretary of the Interior make an annual determination of the quantity of water considered necessary to be in storage in Upper Basin reservoirs to provide protection to the Upper Division States of Colorado, New Mexico, Utah, and Wyoming against drought in the Colorado River Basin. This quantity of water is commonly referred to as ''602(a) storage.'' In years when projected storage in Upper Basin reservoirs is greater than 602(a) storage, and Lake Powell storage is greater than storage at Lake Mead, storage equalization releases are made. Such storage equalization releases are made to maintain, as nearly as practicable, the active storage in Lake Mead equal to the active storage in Lake Powell on September 30 of each year. In years when projected storage in the Upper Basin is less than 602(a) storage, such storage equalization releases from Lake Powell are not made and the operating objective is to maintain a release of a minimum of 8.23 million acre-feet as specified in the Long-Range Operating Criteria.

II. Proposed Action

In July 2000, Reclamation issued a draft environmental impact statement (DEIS) on the proposed adoption of specific criteria, applicable for 15 years, under which surplus water conditions would be determined, and accordingly surplus water made available, for use by the Lower Division States of Arizona, California, and Nevada. During the public comment period for the DEIS, the seven Colorado River Basin States submitted information to the Department of the Interior that contained a proposal for interim surplus criteria and a number of other related issues. This information was published in the **Federal Register** on August 8, 2000 (65 FR 48531–38). One of the related components of the seven Colorado River Basin States' proposal not directly related to Lower Division surplus determinations is contained in Section V of the Basin States submission, ''Determination of 602(a) Storage in Lake Powell During the Interim Period,'' and reads as follows:

> During the interim period, 602(a) storage requirements determined in accordance with Article II(1) of the Criteria [Long-Range Operating Criteria] shall utilize a value of not less than 14.85 million acre-feet (elevation 3,630 feet) for Lake Powell (65 FR 48537).

Reclamation did not adopt this aspect of the seven Basin States submission based upon Reclamation's finding that this proposal was outside the scope of the proposed action for adoption of interim surplus guidelines. See 66 FR 7775 (January 25, 2001).

This proposed action would adopt this aspect of the Basin States' recommendation and would limit 602(a) storage equalization releases when the storage level in Lake Powell is projected to be below 14.85 million acre-feet (elevation 3,630 feet) on September 30 as an added consideration (guideline) in the annual 602(a) storage determination through the year 2016. Under this guideline, water year releases from Lake Powell would be limited to the minimum objective release of 8.23 million acre-feet when Lake Powell is projected to be below 14.85 million acre-feet (elevation 3,630 feet) on September 30. The proposed guideline would remain in effect through calendar year 2016.

A final environmental assessment (EA), ''Adoption of an Interim 602(a) Storage Guideline'' (March 2004), has been prepared by Reclamation. In this final EA, the effects of the proposed action (referred to as the Proposed Action Alternative) are analyzed.

III. Summary of Impacts

Reclamation's analysis indicates that there will be limited impacts resulting from adoption of the proposed guideline. Computer simulation modeling of the Colorado River concludes that there is an 88 percent probability that the proposed guideline will not result in any change to the operation of the Colorado River reservoirs. Under some possible future runoff scenarios, there could be some change to storage equalization releases made from Lake Powell under the proposed guideline. Modeling results showed that there is a 12 percent probability that the proposed guideline would modify storage equalization releases from Lake Powell to Lake Mead to some degree. Within this 12 percent probability range, effects were generally minimal. Modeling results indicate that the total volume of water released from Lake Powell through 2016 will be unaffected by adoption of the proposed guideline. The proposed guideline resulted in no long-term effects and there were no effects observed beyond the year 2016.

1. Lake Powell—There is a 12 percent probability that there could be a temporary increase in the water surface elevation of Lake Powell of 0.01 to 6.4 feet, an increase of up to 407,000 acre-feet of storage (an increase of 2.8 percent).

2. Lake Mead—There is a 12 percent probability that there could be a temporary decrease in water surface elevation of 0.01 to 4.1 feet, a decrease of up to 413,000 acre-feet of storage (a decrease of 2.9 percent).

3. River Flows—Changes to river flows below Lake Powell, if they occur, are projected to be minor. Releases from Lake Powell, Lake Mead, and reservoirs below Lake Mead are projected to

remain within historical normal operating parameters.

4. Water Supply—There are no anticipated effects on water supply to the Upper Division States of Colorado, New Mexico, Utah, and Wyoming. There is a very small probability (about 1 percent) that the proposed guideline could reduce surplus deliveries to the Lower Division States of Arizona, California, and Nevada in a single year through the year 2016. Computer model studies showed that the proposed guideline would not increase the frequency or magnitude of future water shortages to the Lower Division States.

5. Water Deliveries to Mexico—The proposed guideline is not anticipated to result in any change to the delivery of water to Mexico pursuant to the 1944 United States-Mexico Water Treaty.

6. Water Quality—There could be some minor increases in salinity in Lake Mead.

7. Aquatic Resources—There would be no measurable changes to aquatic resources in the area of potential effects.

8. Special Status Species—There would be no effect to special status species caused by the proposed guideline.

9. Recreation—There are no projected adverse impacts to recreation at Lake Powell, Lake Mohave, or Lake Havasu. There would be no anticipated impacts to Colorado River recreation. The proposed guideline could result in some short-term impacts to recreation resources at Lake Mead related to item 2 above.

10. Hydropower—Changes to hydropower production at Glen Canyon Dam and Hoover Dam are projected to be less than 0.01 percent. There could be some minor incremental increases to pumping costs for the Southern Nevada Water Authority which draws water from Lake Mead.

11. Air Quality—There are no projected impacts to air quality.

12. Visual Resources—There are no projected impacts to visual resources.

13. Cultural Resources—There will be no effect to cultural resources as a result of this undertaking. Reclamation is in the process of compiling data regarding the location of cultural resources (and historic properties) within the area of potential effects of the proposed guideline and the Colorado River Interim Surplus Guideline.

14. Indian Trust Assets—There would be no effect to Indian Trust Assets. The proposed guideline does not allocate additional Colorado River water. There would be no effect on existing or additional tribal water rights and/or tribal allocations.

15. Environmental Justice—There are no environmental justice implications from the proposed guideline.

IV. Finding

Based on the analysis of the environmental impacts as described in the final EA and on thorough review of public comments received, Reclamation has determined that implementing the proposed guideline will not have a significant impact on the quality of the human environment or the natural resources of the area. *A Finding of No Significant Impact* is justified for the proposed guideline. Therefore, an environmental impact statement is not necessary to further analyze the environmental effects of the proposed guideline.

V. Decision—Interim 602(a) Storage Guideline

Reclamation hereby adopts the following interim 602(a) Storage Guideline:

1. Through the year 2016, 602(a) storage requirements determined in accordance with Article II(1) of the Long-Range Operating Criteria shall utilize a value of not less than 14.85 million acre-feet (elevation 3,630 feet) for Lake Powell. Accordingly, when projected September 30 Lake Powell storage is less than 14.85 million acre-feet (elevation 3,630 feet), the objective will be to maintain a minimum annual release of water from Lake Powell of 8.23 million acre-feet, consistent with Article II(2) of the Long-Range Operating Criteria.

2. Under the current area-capacity relationship at Lake Powell, a water surface elevation of 3,630 feet corresponds to 14.85 million acre-feet of storage. In the event that a sediment survey is performed at Lake Powell and a revised area-capacity relationship is determined before the year 2016, the revised water storage volume that correlates with the water surface elevation of 3,630 feet at Lake Powell shall be used in Section V(1) of this Interim 602(a) Storage Guideline.

3. The Interim 602(a) Storage Guideline shall be utilized in the operation of the Colorado River in years 2005 through 2016. This guideline will first be implemented in the development of the 2005 Colorado River Annual Operating Plan (AOP) and for all subsequent AOPs through the year 2016.

[FR Doc. 04–11282 Filed 5–18–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Second Review)]

Barium Chloride From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on barium chloride from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 7, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).* The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On May 7, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 4979, February 2, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant

conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 3, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 8, 2004 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 8, 2004. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 14, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11318 Filed 5–18–04; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Chemical Products Corp. to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–439–440 and 731–TA–1077–1080 (Preliminary)]

Polyethylene Terephthalate (PET) Resin From India, Indonesia, Taiwan, and Thailand

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India and Thailand of polyethylene terephthalate (PET) resin provided for in subheading 3907.60.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by Governments of India and Thailand and by reason of imports from India, Indonesia, Taiwan, and Thailand of PET resin that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On March 24, 2004, a petition was filed with the Commission and Commerce by the U.S. PET Resin Producers' Coalition, Washington, DC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of PET resin from India, Indonesia, Taiwan, and Thailand. Accordingly, effective March 24, 2004, the Commission instituted countervailing duty and antidumping investigations Nos. 701–TA–439–440 and 731–TA–1077–1080 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 31, 2004 (69 FR 16955). The conference was held in Washington, DC, on April 14, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 10, 2004. The views of the Commission are contained in USITC Publication 3694 (May 2004), entitled *Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand: Investigations Nos. 701–TA–439–440 and 731–TA–1077–1080 (Preliminary).*

By order of the Commission.

Issued: May 13, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11267 Filed 5–18–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–44 (Second Review)]

Sorbitol From France

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on sorbitol from France.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 7, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On May 7, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 4979, February 2, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 3, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 8, 2004 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 8, 2004. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 14, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11317 Filed 5–18–04; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Archer Daniels Midland Co.; Roquette America, Inc.; and SPI Polyols, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Waste Management of Washington, Inc.,* Civil Action No. C04–983–Z, was lodged on April 30, 2004, with the United States District Court for the Western District of Washington. The consent decree requires defendant Waste Management of Washington, Inc., to compensate the trustees for natural resource damages at the Tulalip Landfill Superfund site, which consist of the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior, for natural resource damages at the Tulalip Landfill Superfund Site that have resulted from the release of hazardous substances at the Site. Under the consent decree Waste Management will pay $190,000 for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Waste Management of Washington, Inc.,* DOJ Ref. #90–11–3–1412/11.

The proposed consent decree may be examined at the office of the United States Attorney, 601 Union Street, Seattle, WA 98101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html,* and at the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax

no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Ass't Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–11323 Filed 5–18–04; 8:45 am]

BILLING CODE 4410–15–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, The National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

Date: June 7, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Humanities Workshops, submitted to the Division of Education Programs at the April 19, 2004 deadline.

Date: June 8, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Humanities Workshops, submitted to the Division of Education Programs at the April 19, 2004 deadline.

Date: June 9, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Humanities Workshops, submitted to the Division of Education Programs at the April 19, 2004 deadline.

Date: June 11, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Humanities Workshops, submitted to the Division of Education Programs at the April 19, 2004 deadline.

Daniel Schneider,

Advisory Committee Management Officer.

[FR Doc. 04–11333 Filed 5–18–04; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 95—Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

3. *The form number is applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who is required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.

6. *An estimate of the number of annual responses:* 154 (146 plus 8 recordkeepers).

7. *The estimated number of annual respondents:* 8.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 447 hours (335 hours reporting (2.3 hrs per response) and 112 hours recordkeeping (14 hrs per recordkeeper)).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC-classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 18, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0047), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated in Rockville, Maryland, this 30th day of April, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–11295 Filed 5–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering withdrawal of an exemption from title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix R, subsection III.L.1 for Facility Operating License No. NPF–3, issued to FirstEnergy Nuclear Operating Company (FENOC or the licensee), for operation of the Davis-Besse Nuclear Power Station (DBNPS), located in Ottawa County, Ohio. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would withdraw an exemption to 10 CFR part 50, Appendix R, subsection III.L.1, regarding the plant's capability to achieve cold shutdown within 72 hours by the alternative shutdown process, independent of offsite power.

The proposed action is in accordance with the licensee's application dated December 17, 2003.

The Need for the Proposed Action

The action is proposed because the licensee has now determined that DBNPS can achieve cold shutdown within 72 hours by the alternative shutdown process independent of offsite power; therefore, the exemption is no longer required.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed exemption withdrawal does not involve radioactive wastes, release of radioactive material into the atmosphere, solid radioactive waste, or liquid effluents released to the environment.

The DBNPS systems were evaluated in the Final Environmental Statement (FES) dated October 1975 (NUREG 75/097). The proposed exemption withdrawal will not involve any change in the waste treatment systems described in the FES.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the DBNPS FES dated October 1975.

Agencies and Persons Consulted

On April 16, 2004, the staff consulted with Ohio State official, C. O'Claire of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 17, 2003 (ADAMS ML033600026). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* 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 in Rockville, Maryland, this 12th day of May, 2004.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III, Section 2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–11297 Filed 5–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on June 2–4, 2004, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 21, 2003 (68 FR 65743).

Wednesday, June 2, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Draft Final 10 CFR 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute (NEI) regarding the draft final 10 CFR 50.69, and draft final Regulatory Guide DG–1121, ''Guidelines for Categorizing Structures, Systems, and Components in Nuclear Power Plants According to Their Safety Significances,'' which endorses NEI 00–04, ''10 CFR 50.69 SSC Categorization Guideline.''

10:45 a.m.–11:45 a.m.: Revised License Renewal Review Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff

regarding the revised process for the staff's review of the license renewal applications.

12:45 p.m.–1:15 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss the following topics scheduled for the ACRS meeting with the NRC Commissioners: PWR Sump Performance, PRA Quality for Decisionmaking, Risk-Informing 10 CFR 50.46, NRC Safety Research Program Report, Economic Simplified Boiling Water Reactor (ESBWR) Pre-Application Review, and Interim Review of the AP1000 Design.

1:30 p.m.–3:30 p.m.: Meeting with the NRC Commissioners, Commissioners' Conference Room, One White Flint North, Rockville, MD (Open)—The Committee will meet with the NRC Commissioners to discuss the topics noted above.

4 p.m.–5:30 p.m.: Digital Instrumentation and Control System Research Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and their contractors regarding NRC research activities in the area of digital instrumentation and control (I&C) systems and related matters.

5:45 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, June 3, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: NRC Staff's Response to the ACRS Report on the AP1000 Design (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding their response to ACRS comments and recommendations included in the March 17, 2004 ACRS report on the AP1000 design.

10:45 a.m.–12 Noon: Proposed Revisions to Standard Review Plan (SRP) Sections and Process and Schedule for Revising the SRP (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed revisions to SRP Sections: 5.2.3, ''Reactor Coolant Pressure Boundary Materials;'' 5.3.1, ''Reactor Vessel Materials;'' and 5.3.3, ''Reactor Vessel Integrity;'' as well as the process and schedule for revising various SRP Sections, including milestones for ACRS review of the proposed revisions.

1:30 p.m.–2:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2:30 p.m.–2:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

3 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, June 4, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–11 a.m.: Metrics for Evaluating the Quality of the NRC Research Programs (Open)—The Committee will discuss the quantitative metrics for use by the ACRS in evaluating the quality of the NRC research programs.

11 a.m.–4 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

4 p.m.–4:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59644). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 13, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–11298 Filed 5–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on June 1, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 1, 2004—8:30 a.m. until the conclusion of business

The purpose of this meeting is to hear presentations regarding materials degradation issues. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the EPRI/MRP, NEI and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 12, 2004.

Marvin D. Sykes,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–11299 Filed 5–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 1, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 1, 2004—1:30 p.m.–3:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 12, 2004.

Marvin D. Sykes,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–11300 Filed 5–18–04; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Facility Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of commission visit.

SUMMARY: Postal Rate Commissioners and staff members will tour printing and distribution facilities located in the vicinity of Martinsburg, West Virginia on May 20 and 21, 2004. The purpose is to familiarize attendees with various postal-related operations, including those related to parcel handling.

DATES: May 20, 2004 (afternoon): Quad/Graphics Parcel Direct presentation/facility tour. May 21, 2004 (morning): 1. Quad/Graphics commercial printing plant tour. 2. Norm Thompson Outfitters presentation/facility tour.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 04–11347 Filed 5–18–04; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49689; File No. 4–429]

Joint Industry Plan; Notice of Filing of Amendment No. 10 to the Plan of the Purpose of Creating and Operating an Intermarket Options Linkage Regarding the Handling of Principal Acting as Agent Orders

May 12, 2004.

Pursuant to section 11A of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on February 18, 2004, March 1, 2004, March 23, 2004, April 20, 2004, April 23, 2004, and April 27, 2004, the International Securities Exchange, Inc. (''ISE''), American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), Pacific Exchange, Inc. (''PCX''), Philadelphia Stock Exchange, Inc. (''Phlx''), and Boston Stock Exchange, Inc. (''BSE'') (collectively the ''Participants'') respectively submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the ''Linkage Plan'').[3] The amendment proposes to modify the manner in which a member of a Participant may send Principal Acting as Agent Orders (''P/A Orders'') that are larger than the Firm Customer Quote Size (''FCQS''). The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan amendment.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, PCX and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

I. Description and Purpose of the Amendment

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.[4] The FCQS is the minimum size for which a Participant must provide an execution in its automatic execution system for a P/A Order, if the Participant's auto-ex system is available.

Currently, the Linkage Plan provides a market maker with two ways to handle P/A Orders that are larger than the FCQS. First, the market maker may send a P/A Order larger than the FCQS representing the entire customer order for manual processing at the receiving Participant. Second, the market maker may send an initial P/A Order for up to the FCQS. If the market maker then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

The proposed Amendment addresses the handling of P/A orders if the market maker chooses the second alternative, the sending of multiple P/A Orders. As currently drafted, the Linkage Plan does not recognize the possibility that a Participant's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, the proposed Amendment specifies that a market maker sending a second P/A Order may limit such order to the lesser of: the remaining size of the customer order; 100 contracts; or the size of the receiving Participant's disseminated quotation.

In addition, the Participants believe that there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a market maker must send the entire order to one Participant or can send orders to multiple Participants, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. The Amendment proposes to clarify the Linkage Plan to specify that a market maker may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size of the customer order or 100 contracts. However, a market maker may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

Finally, the proposed Amendment modifies the provisions of the Linkage Plan relating to the time period within which a receiving Participant must inform the sending Participant of the amount of the order executed and the amount, if any, that was canceled, and the time period for which a sending Participant must wait while the receiving Participant continues to disseminate the same price at the national best bid or offer before sending a second P/A Order. Currently, the applicable time period for each such circumstance is 15 seconds. The proposed Amendment would permit the Options Linkage Authority to determine different applicable time periods for both circumstances, subject to approval by the Commission.

II. Implementation of the Plan Amendment

The Participants intend to make the proposed amendment to the Linkage Plan reflected in this filing effective when the Commission approves the amendment.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendment to the Linkage Plan 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 4–429 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 Joint Amendment No. 10 to File Number 4–429. 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 offices of the Amex, BSE, CBOE, ISE, PCX and Phlx. 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 Joint Amendment No. 10 to File Number 4–429 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11259 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

[4] Section 2(16)(a) of the Linkage Plan.

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49691; File No. 4–429]

Joint Industry Plan; Notice of Filing of Joint Amendment No. 11 to the Options Intermarket Linkage Plan Relating to the Handling of Satisfaction Orders

May 12, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on February 18, 2004, March 1, 2004, March 23, 2004, April 20, 2004, April 23, 2004, and April 28, 2004, the International Securities Exchange, Inc. (''ISE''), the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Pacific Exchange, Inc. (''PCX''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 11'') to the Plan for the Purpose of Creating and Operating an Intermarket

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

Option Linkage (''Linkage Plan'').[3] In proposed Joint Amendment No. 11, the Participants propose to change the manner in which the Participants and their members process Satisfaction Orders[4] sent to them following a Trade-Through.[5] The Commission is publishing this notice to solicit comments from interested persons on the proposed Joint Amendment No. 11 to the Linkage Plan.

I. Description and Purpose of the Amendment

The purpose of proposed Joint Amendment No. 11 is to change the manner in which the Participants process Satisfaction Orders following a Trade-Through. Pursuant to the Linkage Plan, if a disseminated quote that is traded through represents a customer order, a member representing that order may send a Satisfaction Order.[6] Upon receipt of the Satisfaction Order, the member that initiated the Trade-Through can either fill the Satisfaction Order, or cause the price of the transaction that constituted the Trade-Through to be corrected to a price at which a Trade-Through would not have occurred.[7] While the Participants believe this process generally works well, the experience with the Options Intermarket Linkage (''Linkage'') to date has led the Participants to agree to three changes to Satisfaction Order processing.

First, the Linkage Plan currently permits a Participant to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through).[8] The amendment proposes that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Plan currently permits a Participant that sends a Satisfaction Order through Linkage to reject the receiving Participant's execution of the Satisfaction Order (a ''fill'') within 30 seconds of being notified of the fill if the customer order that underlies the Satisfaction Order either has been executed on the sending exchange or has been canceled while the Satisfaction Order is being processed.[9] The proposed amendment would clarify that the customer order must be cancelled or executed prior to the receipt of the Satisfaction Order fill report. However, if the order is filled or canceled, there is currently no requirement in the Linkage Plan for the Participant that sent the Satisfaction Order to cancel it while it is still pending execution on another market. The Participants believe that this aspect of the Linkage Plan leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the amendment proposes a requirement that a Participant cancel a pending Satisfaction Order that it sent through Linkage if the underlying customer order is filled or canceled.

Third, as noted above, a Participant can reject a Satisfaction Order fill if the underlying customer order is executed or cancelled while the Satisfaction Order is pending. However, it is possible that the member that initiated the Satisfaction Order could decide to trade against the customer order before the member receives a notice from another Participant that the Satisfaction Order has been filled. In this case, the Participants believe that it would be inappropriate to reject the fill. Accordingly, the proposed amendment would provide that a Participant may not reject the fill of the Satisfaction Order when the underlying customer order has been executed against the member that initiated the Satisfaction Order.

II. Implementation of the Plan Amendment

The Participants propose to make the amendment to the Linkage Plan reflected in this filing effective when the Commission approves the amendment.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Joint Amendment No. 11 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 4–429 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 Joint Amendment No. 11 to File Number 4–429. 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 Linkage Plan amendment that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendment 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 Participants. 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 Joint Amendment No. 11 to File Number 4–429 and should be submitted on or before June 9, 2004.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, February 3, 2003, June 25, 2003, and January 29, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37689 (June 25, 2003); and 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

[4] A ''Satisfaction Order'' is an order sent through the Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[5] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Section 2(29) of the Linkage Plan.

[6] *See* Section 7(a)(ii)(D) & 8(c)(ii)(B)(2) of the Linkage Plan.

[7] *See* Section 8(c)(ii)(A) of the Linkage Plan.

[8] *See* Section 8(c)(ii)(B) of the Linkage Plan.

[9] *See* Section 8(c)(ii)(C) of the Linkage Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11261 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49692; File No. 4–429]

Joint Industry Plan; Notice of Filing of Joint Amendment No. 12 to the Options Intermarket Linkage Plan Relating to the Limitation in Liability for Filling Satisfaction Orders Sent Through the Linkage at the End of the Trading Day

May 12, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on April 26, 2004, April 26, 2004, May 5, 2004, May 7, 2004, May 7, 2004, and May 11, 2004, the International Securities Exchange, Inc. (''ISE''), the Pacific Exchange, Inc. (''PCX''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Chicago Board Options Exchange, Inc. (''CBOE'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 12'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In proposed Joint Amendment No. 12, the Participants propose to extend the pilot provision limiting Trade-Through[4] liability at the end of the trading day for an additional seven months, until January 31, 2005, and to increase the limitation on liability from 10 contracts to 25 contracts. The Commission is publishing this notice to solicit comments from interested persons on the proposed Joint Amendment No. 12.

I. Description and Purpose of the Amendment

The Participants are proposing to extend for an additional seven months, until January 31, 2005, the pilot provision in the Linkage Plan[5] that limits Trade-Through liability at the end of the trading day. The Participants are also seeking to increase the limitation on Trade-Through liability for each Satisfaction Order[6] that is sent via Linkage at the end of the trading day from 10 contracts to 25 contracts during the extended pilot period.

The Participants originally proposed a 10-contract limitation on liability during the last seven minutes of the trading day as a one-year pilot in Joint Amendment No. 4 to the Plan.[7] In Joint Amendment No. 4, the Participants represented that members of various exchanges had raised concerns regarding their obligation to fill Satisfaction Orders (which they receive when an options exchange disseminating a better price complains about a Trade-Through) at the close of trading in the underlying security. Specifically, members expressed concern that they may not have time to hedge the positions they acquire.[8] Thus, the Participants proposed to limit liability for Trade-Throughs for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class to the filling of 10 contracts per Participant, per transaction. The Participants represented that they believed that the proposal would protect small customer orders, yet establish a reasonable limit for their members' liability. Further, the Participants represented that the proposal would not affect a member's potential liability under an exchange's disciplinary rule for engaging in a pattern or practice of trading through other markets under Section 8(c)(i)(C) of the Linkage Plan.

In the order approving Joint Amendment No. 4, Commission stated that in the event the Participants chose to seek permanent approval of this limitation, the Participants must provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the ''Report'').[9] In a subsequent amendment to the Linkage Plan for the purpose of extending the pilot, Joint Amendment No. 8, the Participants represented that if they were to seek to make the limitations on Trade-Throughs permanent, they would submit the Report to the Commission no later than March 31, 2004.[10] With respect to the Report, the Participants represented in Joint Amendment No. 8 that they planned to submit individual Reports regarding the requested data as it pertained to their own exchange. They further represented that these Reports would detail the number of Trade-Throughs in the last seven minutes and the rest of the day, as well as the number and size of Satisfaction Orders that would have been filled absent the current exemption. In addition, the Participants represented that the Reports would provide information on the extent to which the exchange's members hedged their options trading during the day as part of their overall risk management. Finally, the Participants represented that they would make every effort to provide specific information regarding hedging activity at the end of the trading day.[11]

Following the extension of the pilot program, certain Participants provided the Commission with portions of the information required in the Report, but were unable to provide sufficient information to enable the Commission to evaluate whether permanent approval would be appropriate. Extending the pilot through January 31, 2005 would allow the limitation to continue in

[10] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, February 3, 2003, June 25, 2003, and January 29, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37689 (June 25, 2003); and 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

[4] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the national best bid and offer in an options series calculated by a Participant. *See* Section 2(29) of the Linkage Plan.

[5] *See* Section 8(c)(ii)(B)(2)(c) of the Linkage Plan.

[6] A ''Satisfaction Order'' is an order sent through the Linkage to notify a Participants of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[7] The Commission approved the pilot on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving ''Joint Amendment No. 4''). The Commission subsequently extended the pilot until June 30, 2004. *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving ''Joint Amendment No. 8'').

[8] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

[9] *See supra* note 7.

[10] *See* Securities Exchange Act Release No. 49010 (December 30, 2003), 69 FR 706 (January 6, 2004) (Notice of Filing Joint Amendment No. 8).

[11] *Id.*

effect, with the increase in liability to 25 contracts, while the Participants continue to discuss with Commission staff the information necessary to permit the Commission to evaluate possible permanent approval of the Trade-Through limitation. The proposed increase in the limit on liability would become effective on July 1, 2004, when the current pilot expires. The Participants propose no change to the time period in the trading day during which the limit would apply.

II. Implementation of the Plan Amendment

The Participants propose to make the proposed amendment to the Linkage Plan reflected in this filing effective on July 1, 2004.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint Amendment No. 12 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 4–429 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 Joint Amendment No. 12 to File Number 4–429. 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 Linkage Plan amendment that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendment 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 Participants. 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 Joint Amendment 12 to File Number 4–429 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11262 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49694; File No. PCAOB–2003–09]

Public Company Accounting Oversight Board; Order Approving Proposed Rule and Application Instructions Governing Withdrawal From Registration

May 13, 2004.

I. Introduction

On October 15, 2003, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed a Form 19b–4 with the Securities and Exchange Commission (the ''Commission'') pursuant to Sections 102 and 107 of the Sarbanes-Oxley Act of 2002 (the ''Act''), consisting of a proposed rule and application form completion instructions governing withdrawal from registration (collectively the ''proposed rule''). Notice of the proposed rule was published in the **Federal Register** on April 8, 2004.[1] The Commission received one comment letter. For the reasons discussed below, the Commission is granting approval of the proposed rule.

II. Description

The Act established the PCAOB to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration, standard setting, inspections, and disciplinary programs.

In furtherance of the registration requirement in Section 102 of the Act, the PCAOB adopted registration rules on April 23, 2003. The Commission approved those rules on August 1, 2003, following a public comment period. The registration rules do not address the process by which a registered public accounting firm may cancel, rescind or withdraw its registration with the PCAOB. Accordingly, the Board published a proposed registration withdrawal rule and related withdrawal application form completion instructions for public comment on July 28, 2003 (PCAOB Release No. 2003–014). The PCAOB revised the proposed rule in response to three letters it received during the comment period. The PCAOB adopted the proposed rule, as revised, and concurrently authorized submission of the proposed rule to the Commission for approval. The proposed rule was filed with the Commission pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act'').

The PCAOB has proposed a rule and instructions for completion of an application form (Form 1–WD) to govern the process by which public accounting firms may request leave to withdraw from registration. Under the proposed rule, a registered firm may seek to withdraw at any time by filing Form 1–WD. However, withdrawal from registration is not automatic. The PCAOB may order that withdrawal be delayed while the Board conducts a related inspection, investigation, or disciplinary proceeding. The PCAOB may delay a requested withdrawal for up to 18 months, and, under the rule, that period shall automatically be extended to cover any period necessary to complete a disciplinary proceeding initiated prior to the expiration of the 18-month period.

The proposed rule also provides that, if the PCAOB determines within three years of granting a request for withdrawal that the withdrawal application form contained a material misstatement or omission, the Board may void the withdrawal retroactively. The PCAOB wants to provide a basis for inspecting, investigating and potentially disciplining a registered firm that made a false or misleading statement in its withdrawal application. Because the PCAOB's regulatory authority is greatest over entities registered with the Board, the proposed rule provides that the registration of a suspect firm shall be reinstated, effective from the date of the deemed withdrawal.

While a request for leave to withdraw is pending, the applicant may not

[12] 17 CFR 200.30–3(a)(29).

[1] Release No. 34–49520 (April 2, 2004); 69 FR 18656 (April 8, 2004).

engage in the preparation or issuance of, or play a substantial role in preparing or furnishing, a public company audit report, other than to issue consent to the use of an audit report for a prior period. In addition, a firm that has filed a Form 1–WD may not publicly hold itself out as registered with the PCAOB without disclosing that its registration status is ''registered—withdrawal request pending.''

The American Institute of Certified Public Accountants (the ''AICPA'') submitted to the Commission a comment letter dated April 29, 2004. The comment letter contains a restatement of the points made by the AICPA in a letter dated August 18, 2003 on the proposed rule released by the PCAOB for public comment on July 28, 2003. The PCAOB gave careful consideration to the comments received from the AICPA and two other commenters in the course of revising the proposed rule prior to its adoption by the Board.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rule (File No. PCAOB–2003–09) be and hereby is approved.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11263 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49699; File No. SR–CBOE–2003–42]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to the Retail Automatic Execution System

May 13, 2004.

On October 1, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the execution of certain broker-dealer orders. The proposed rule change was published for comment in the **Federal Register** on November 7, 2003.[3] The Commission received no comment letters on the proposal. On May 5, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, as amended. The Commission also seeks comment on Amendment No. 1 from interested persons.

I. Description of the Proposal

The CBOE proposes to amend CBOE Rule 6.8, Interpretation and Policy .01, to allow broker-dealer orders that are eligible for execution on CBOE's Retail Automatic Execution System (''RAES'') to execute automatically against limit orders on the CBOE book in classes designated by the appropriate Floor Procedure Committee. The proposed rule change would permit broker-dealer orders to execute automatically against customer limit orders on the book provided that such customer orders are at the national best bid or offer (''NBBO''). However, the proposed rule change provides that proprietary orders of an Order Entry Firm or its affiliates, or orders solicited by the Order Entry Firm from members or non members (collectively, ''Order Entry Firm Orders''), may not automatically execute against a customer limit order on the limit order book that was placed on the book by the Order Entry Firm unless the customer order has been exposed on the book for at least thirty seconds. Finally, the proposed rule change specifies that it shall be a violation of the proposed rule for any Exchange member or member organization to be a party to any arrangement designed to circumvent the proposed rule by allowing a customer, member, member organization or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange whether such orders are delivered via the CBOE ORS system or represented in the trading crowd.

II. Discussion

The Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] which, among other things, requires that the CBOE's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission anticipates that the ability for broker-dealer orders on RAES to execute against customer limit orders on the book should help to provide faster execution of both eligible broker-dealer orders and eligible customer limit orders, while reducing the burden on the Exchange's members to manually execute these orders. The Commission believes that the proposal should benefit customers using the RAES system, as well as customers whose orders are residing in the Exchange's customer limit order book. Moreover, the Commission finds that the proposed rule change that requires a customer limit order to be exposed on the book for 30 seconds before an Order Entry Firm Order can execute against it addresses the concern that Order Entry Firms could use this proposed rule change to internalize or cross orders. The Commission notes that CBOE represented that it has developed a surveillance procedure to enforce compliance with this provision by its members.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 contains the proposed language relating to the thirty-second exposure of customer limit orders on the book. In

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48721 (October 30, 2003), 68 FR 63158.

[4] *See* letter from Angelo Evangelou, Attorney, CBOE, to Kelly Riley, Assistant Director, Division of Market Regulation, Commission, dated May 4, 2004 (''Amendment No. 1''). In Amendment No. 1, the CBOE modified the proposed rule change by providing that neither proprietary orders of an Order Entry Firm that submitted a customer order for placement on the limit order book, orders from any firm affiliated with the Order Entry Firm, nor orders solicited by the Order Entry Firm from members or non-member broker-dealers may execute (automatically or otherwise) against the customer limit order unless the customer limit order is exposed on the book for at least thirty (30) seconds. In addition, the CBOE amended the proposed rule change to provide that it be adopted as a pilot program ending on November 30, 2004.

[5] In approving this proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

addition, Amendment No. 1 requests that the proposed rule change be approved as a pilot until November 30, 2004. The thirty-second exposure of customer limit orders, contained in Amendment No. 1, is intrinsic to the proposed rule change's safeguards against internalization. Further, Amendment No. 1 provides that it shall be a violation of CBOE Rule 6.8 to circumvent the exposure requirement set forth in the proposed rule change, thereby providing CBOE with a means for addressing inappropriate executions prior to the expiration of the thirty-second exposure requirement, consistent with the protection of investors and the public interest. Accordingly, the Commission believes that there is good cause, consistent with section 19(b) of the Act,[8] to approve Amendment No. 1 to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2003–42 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2003–42. 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 Amendment No. 1 to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 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 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2003–42 and should be submitted on or before June 9, 2004.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CBOE–2003–42) is hereby approved, and Amendment No. 1 is approved on an accelerated basis, on a pilot basis until November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11309 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49687; File No. SR–CBOE–2004–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Relocation of an Entire Trading Station's Securities to Another Trading Station

May 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE filed Amendment No. 1 on March 15, 2004.[3] CBOE filed Amendment No. 2 on May 6, 2004.[4] 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

CBOE proposes to amend CBOE Rules 8.84 and 8.95 to grant to the MTS Committee, and not the Allocation Committee, the authority to approve the relocation of an entire trading station's securities to another trading station that is operated by the same DPM organization. The text of the proposed rule change follows. Additions are in *italics.*

* * * * *

Section C: Designated Primary Market-Makers (Rules 8.80–8.91)

* * * * *

Rule 8.84. Conditions on the Allocation of Securities to DPMs

(a) The MTS Committee may establish (i) restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and to affiliated DPMs and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

(b) The MTS Committee has the authority under other Exchange rules to

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division of Market Regulation (''Division''), Commission, dated March 12, 2004 (''Amendment No. 1''). In Amendment No. 1, CBOE amended the proposal to further explain why it is transferring to the Modified Trading System Appointments (''MTS'') Committee the authority to determine whether to relocate an entire trading station's securities to another trading station that is operated by the same Designated Primary Market Maker (''DPM''). CBOE also clarified the process the MTS Committee would follow in deciding whether to relocate securities. CBOE also noted in Amendment No. 1 that the MTS Committee would relocate securities in accordance with CBOE Rule 30.18, which allows for limited side-by-side trading and integrated market making, and that to the extent any person is aggrieved economically by any MTS Committee decision, such person may seek to have the decision reviewed under Chapter XIX of CBOE's Rules. Finally, CBOE also amended its proposed rule text in its entirety.

[4] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 5, 2004 (''Amendment No. 2''). In Amendment No. 2, CBOE clarified when the MTS Committee may forgo giving notice to a DPM organization and trading crowds prior to relocation because expeditious action is necessary. CBOE also stated that it anticipates that the relocation of securities under this proposal pursuant to the consideration of the appropriate factors, will have a positive impact on the affected DPM's, market makers, and market participants.

restrict the ability of particular DPMs to receive allocations of securities, including but not limited to, Rules 8.88(b) and 8.60, Rule 8.83(d), and Rule 8.90.

Interpretations and Policies

.01 (a) It shall be the responsibility of the MTS Committee, pursuant to this Rule, to determine whether or not to relocate all of the securities traded at a trading station operated by a DPM organization to another trading station operated by the same DPM. In making a determination pursuant to this Interpretation, the MTS Committee should evaluate whether the change is in the best interests of the Exchange, and the Committee may consider any information that it believes will be of assistance to it. Factors to be considered may include, but are not limited to, any one or more of the following: performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved in the relocation, number of market-makers affected by the relocation of the securities, and trading volume of the securities.

(b) Prior to making a determination pursuant to this Interpretation, except when expeditious action is required, the MTS Committee shall notify the DPM organization and trading crowds affected by the relocation of the securities of the action the MTS Committee is considering taking, and shall convene one or more informal meetings of the Committee with the DPM and the trading crowds to discuss the matter, or shall provide the DPM and the trading crowds with the opportunity to submit a written statement to the Committee.

* * * * *

Rule 8.95 Allocation of Securities and Location of Trading Crowds and DPMs

(a) The Allocation Committee shall be responsible for determining for each equity option class traded on the Exchange: (i) whether the option class should be allocated to a trading crowd or to a DPM and (ii) which trading crowd or DPM should be allocated the option class. The Allocation Committee shall also be responsible for determining the location on the Exchange's trading floor of each trading crowd, each DPM, and each security traded on the Exchange. The Special Product Assignment Committee shall be responsible for determining for each security traded on the Exchange other than an equity option (i) whether the security should be allocated to a trading crowd or to a DPM and (ii) which trading crowd or DPM should be allocated the security.

(b)–(g) no change.

Interpretations and Policies

.04 Notwithstanding paragraph (a) of this Rule, the MTS Committee shall have the authority to relocate all of the securities traded at a trading station operated by a DPM organization to another trading station operated by the same DPM organization pursuant to Interpretation .01 of Rule 8.84.

* * * * *

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

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

CBOE Rule 8.95(a) currently provides that the Exchange's Allocation Committee is responsible for determining the location on the Exchange's trading floor of each trading crowd, each DPM, and each security traded on the Exchange. Moreover, Paragraph (c) of Rule 8.95 provides that any decision made by the Allocation Committee (or the Special Product Assignment Committee) may be changed if the committee concludes that a change is in the best interest of the Exchange based on operational factors or efficiency. Paragraph (d) of Rule 8.95 describes the process the Allocation Committee follows prior to taking any action under Rule 8.95(c), including giving notice to the DPM and trading crowd affected by the proposed committee action, and giving the DPM and the trading crowd an opportunity to appear before the committee or submit a written statement to the committee.

Recently, some DPM organizations, which operate as a DPM at more than one trading station on the Exchange's trading floor, have requested to relocate all of the securities traded at a particular trading station operated by that DPM organization to another trading station operated by the same DPM (sometimes referred to as consolidations of DPM trading stations). Pursuant to CBOE Rule 8.95, CBOE's Allocation Committee has considered these requests.

However, because these requests may impact the operational performance and market performance of the DPM organization, the Exchange believes that it would be appropriate for the MTS Committee to consider these types of requests.[5] Indeed, the MTS Committee typically reviews DPM transfer of interest proposals that involve, among other things, changes to a DPM's management structure. Further, under current CBOE's rules, the MTS Committee is vested with the authority to, among other things, approve member organizations to act as DPMs (CBOE Rule 8.83); establish restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations (CBOE Rule 8.84); review DPMs' operations and performance, including an evaluation of the extent to which a DPM has satisfied its obligations under CBOE Rule 8.85—DPM Obligations (CBOE Rule 8.88); and approve the transfer of DPM appointments (CBOE Rule 8.89).[6] Accordingly, CBOE believes that it is appropriate for the MTS Committee to determine whether or not to relocate an entire trading station's securities to another trading station that is operated by the same DPM.[7] As a result, the Exchange proposes to add a new interpretation to CBOE Rule 8.84 which states that it shall be the responsibility of the MTS Committee to determine whether or not to relocate all of the securities traded at a trading station operated by a DPM organization to another trading station operated by the same DPM.[8]

Proposed Interpretation .01 to CBOE Rule 8.84 also states that in making a determination pursuant to the Interpretation, the MTS Committee

[5] In Amendment No. 1, CBOE clarified that the MTS Committee may determine whether to relocate an entire trading station's securities to another trading station that is operated by the same DPM, pursuant to a request from a DPM organization or on the Committee's own initiative. *See* Amendment No. 1, supra note 3.

[6] *See* Amendment No. 1, *supra* note 3.

[7] *Id.*

[8] CBOE also proposes to add a new interpretation to CBOE Rule 8.95 stating that notwithstanding paragraph (a) of CBOE Rule 8.95, the MTS Committee shall have the authority to relocate all of the securities traded at a trading station operated by a DPM organization to another trading station operated by the same DPM organization pursuant to Interpretation .01 of CBOE Rule 8.84.

should evaluate whether the change is in the best interest of the Exchange and may consider any information that it believes will be of assistance to it.[9] Factors to be considered may include, but are not limited to, any one or more of the following: performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved in the relocation, number of market-makers affected by the relocation of the securities, and trading volume of the securities. CBOE believes that the various factors identified under proposed Interpretation .01 to CBOE Rule 8.84 that the MTS Committee may consider when evaluating whether to relocate an entire trading station's securities are generally intended to relate to and be more descriptive of the factors that the Allocation Committee previously utilized when making such relocation decisions under CBOE Rule 8.95.[10] CBOE further believes that if, after reviewing the appropriate factors and determining that a relocation of securities is in the best interests of the Exchange in accordance with Interpretation .01(a) to CBOE Rule 8.84, the MTS Committee determines to relocate an entire trading station's securities to another trading station that is operated by the same DPM organization, that such relocation would have a positive impact on the DPM trading those option classes, the market-makers choosing to trade those options classes, and other market participants.[11]

Similar to paragraph (d) of CBOE Rule 8.95, the proposed new Interpretation .01 to CBOE Rule 8.84 also includes a provision requiring the MTS Committee to notify the DPM organization and trading crowds affected by the relocation of the securities of the action the MTS Committee is considering taking, and shall convene one or more informal meetings of the Committee with the DPM and the trading crowds to discuss the matter, or shall provide the DPM and the trading crowds with the opportunity to submit a written statement to the Committee.[12]

This proposed change maintains the authority of the Allocation Committee (under CBOE Rules 8.95(a) and (c)) to determine whether or not to relocate less than all of the securities at a particular trading station to another trading station that is operated by the same DPM organization.

Finally, CBOE notes that (i) nothing in this proposal is intended to amend CBOE's rules which allow for limited side-by-side trading and integrated market making (CBOE Rule 30.18), and (ii) to the extent any person is aggrieved in an economic sense by any decision made by the MTS Committee, such person may seek to have the decision reviewed under Chapter XIX of the Exchange's Rules.[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[14] in general and furthers the objectives of section 6(b)(5)[15] in particular in that it will 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 a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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

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

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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 an e-mail to *rule-comments@sec.gov.* Please include File Number CBOE–2004–05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-CBOE–2004–05. 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

[9] CBOE believes that this requirement is consistent with the requirement of current CBOE Rule 8.95(c). *See* Amendment No. 2, *supra* note 4. Paragraph (c) of CBOE Rule 8.95 provides that any decision made by the Allocation Committee may be changed if the Committee concludes that a change is in the best interest of the Exchange based on operational factors or efficiency.

[10] *See* Amendment No. 1, *supra* note 3.

[11] *See* Amendment No. 2, *supra* note 4. CBOE trading crowd members, including market makers, are able to move freely around CBOE's trading floor among the trading crowds to which they are appointed. Therefore, market makers would continue to be able to trade their assigned option classes if those options classes were moved to another trading station due to the consolidation of a DPM's options classes. Specifically, CBOE market makers are able to move freely around the trading floor, if the market makers execute at least 75% of their total contract volume in their appointed classes. *See* Interpretation .03A to CBOE Rule 8.7. Telephone conversation between Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, on April 30, 2004.

[12] In Amendment No. 1, CBOE clarified that proposed Interpretation .02 to CBOE Rule 8.84 allows the MTS Committee to forego giving notice to the DPM organization and trading crowds affected by the relocation of the securities when expeditious action is required. CBOE noted that this is consistent with existing CBOE Rule 8.95(d), which states that the Allocation Committee similarly may forego giving notice when expeditious action is required. *See* Amendment No. 1, *supra* note 3. CBOE clarified, however, that the MTS Committee would do this only in unusual circumstances, such as extreme market volatility or some other situation requiring urgent action. Any determination by the MTS Committee in this regard could be, but would not be required to be, temporary. *See* Amendment No. 2, *supra* note 4.

[13] *See* Amendment No. 1, *supra* note 3. The appeal process continues to be available in event the MTS Committee forgoes giving notice to the affected trading crowd because expeditious action is required. Telephone conversation between Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, on April 27, 2004.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

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–CBOE–2004–05 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11310 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49696; File No. SR–ISE–2004–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by International Securities Exchange, Inc., Relating to Trading Options on the S&P MidCap 400 Index

May 13, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2004, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. ISE amended its proposal on April 19, 2004.[3] The proposal was also amended by ISE on May 13, 2004.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange is proposing to amend its rules to trade options on the Index. The text of the proposed rule change, as amended, appears below. Additions are *italicized*; deletions are in [brackets].

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Rule 2001. Definitions

((a)–(m) No change).

Supplementary Material to Rule 2001

.01 The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.

Underlying index	Reporting authority
S&P SmallCap 600 Index.	Standard & Poor's.
Morgan Stanley Technology Index.	American Stock Exchange.
S&P MidCap 400 Index.	*Standard & Poor's.*

Rule 2004. Position Limits for Broad-Based Index Options

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by this Rule 2004. There may be no position limit for certain Specified (as provided in Rule 2000) broad-based index options contracts. All other broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in the chart below.

Broad-based underlying index	Standard limit (on the same side of the market)	Restrictions
S&P SmallCap 600 Index *S&P MidCap 400 Index*	100,000 contracts*45,000 contracts*	No more than 60,000 near-term *No more than 25,000 near-term.*

((b)–(c) No change).

Rule 2009. Terms of Index Options Contracts

((a)(1)–(3) no change)

(4) ''European-Style Exercise.'' The following European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index[.]

(ii) Morgan Stanley Technology Index

(iii) S&P MidCap 400 Index

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 2008(g), unless the current index value at expiration is fixed in accordance with

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 16, 2004 (''Amendment No. 1''). In Amendment No. 1, the ISE made technical corrections to its rule text.

[4] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated May 13, 2004 (''Amendment No. 2''). In Amendment No. 2, the ISE provided additional information on the Standard & Poor's MidCap 400 Index (''S&P MidCap 400'' or ''Index'') and added two exhibits to the proposed rule change. The first exhibit is a letter from the Options Price Reporting Authority stating that it has the capacity to support the trading of options on the Index on the Exchange. The second exhibit is a document that sets forth Standard & Poor's criteria for inclusion or exclusion of components in the Index.

the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The following A.M.-settled index options are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index

(ii) Morgan Stanley Technology Index

(iii) S&P MidCap 400 Index

(b) Long-Term Index Options Series.

((1)(i) and (ii) no change)

(2) Reduced Value Long Term Options Series.

(i) Reduced-value long term options series on the following stock indices are approved for trading on the Exchange:

(A) S&P SmallCap 600 Index

(B) Morgan Stanley Technology Index

(C) *S&P MidCap 400 Index*

(ii) Expiration Months. Reduced-value long term options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) The interval between strike prices will be no less than $5.00; provided, that in the case of the following classes of index options, the interval between strike prices will be no less than $2.50:

(i) S&P SmallCap 600, if the strike price is less than $200.00[.]

(ii) Morgan Stanley Technology Index, if the strike price is less than $200.00

(iii) *S&P MidCap 400 Index, if the strike price is less then $200.00*

((c)(2)–(e) no change)

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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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The ISE 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 ISE proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style index options and LEAPS, including reduced value LEAPS, on the S&P MidCap 400. Options on the Index are currently trading on the American Stock Exchange LLC (''Amex'').[5] ISE states that the proposed rule changes adopt the same standards and product specifications that are currently applied for options traded on the S&P MidCap 400 on Amex.

Index Design and Composition. The S&P MidCap 400 Index measures the performance of the mid-range sector of the U.S. stock market. The Index is based on 400 stocks chosen on the basis of market capitalization, liquidity, and industry group representation. The Index is market value (capitalization) weighted.[6] The Index was introduced on June 19, 1991.[7] The Index is composed of 400 domestic stocks from the ten market sectors. Following are the ten market sectors along with their respective weightings in the Index, as of February 26, 2004: Energy (5.5%); Materials (6.3%); Industrials (14.5%); Consumer Discretionary (16.3%); Consumer Staples (4.5%); Health Care (9.5%); Financials (16.5%); Information Technology (19.0%); Telecommunications Services (0.8%); and Utilities (7.3%). A complete list of the 400 component stocks in the Index is available at the Exchange, on the Amex website, and on the S&P Web site.

As of January 6, 2004, 286 companies in the Index are listed on the New York Stock Exchange, Inc. (''NYSE''), 112 on the National Association of Securities Dealers, Inc. (''NASD''), Automated Quotation System (''Nasdaq''), and 2 on the Amex. All Nasdaq stocks in the Index are designated as national market system securities by the NASD, meaning, among other things, that real-time last sale reports are available for these stocks. As of January 6, 2004, no one stock comprises more than 1.23% of the Index's total value, and the percentage weighting of the 5 largest components in the Index accounts for only 4.66% of the Index's value. Additionally, 344 (86%) of the 400 stocks included in the Index, representing 88.1% of the total weight of the Index, are the subject of standardized options trading, and many of the other Index component stocks are eligible for options trading (as of January 6, 2004).

As of January 6, 2004, the market capitalization of the stocks in the Index ranged from a high of $11.8 billion to a low of $336.2 million, with the mean and median being $2.4 billion and $2.1 billion, respectively. The total number of shares outstanding for the stocks in the Index ranges from a high of 471.4 million shares to a low of 9.5 million shares. The price per share of the stocks in the Index ranges from a high of $796.51 to a low of $3.55. Finally, the trading volume of the stocks in the Index ranges from a high of 11,489,282 average shares per day to a low of 7,605 average shares per day, with the median and mean being 437,107 and 724,445, respectively.

For the six-month period ending January 6, 2004, 398 of the 400 (99.5%) companies within the Index had an average daily trading volume greater than 30,000 shares per day. Those companies represent 99.25% of the market capitalization of the Index. The average daily trading volume of the 20 most heavily traded companies in the Index, representing 7.51% of the market capitalization of the Index, was 3,784,032 shares per day.

Index Calculation and Index Maintenance. The S&P MidCap 400 is calculated continuously,[8] using the last sale price for each component stock in the Index, and is disseminated every 15 seconds throughout the trading day.[9] To

[5] *See* Exchange Act Release No. 30290 (February 3, 1992) (order approving Amex to trade options on the S&P MidCap 400 Index, hereinafter the ''1992 Order'').

[6] The calculation of a market capitalization-weighted index involves taking the summation of the product of the price of each stock in the index and the shares outstanding for each issue. In contrast, a price-weighted index involves taking the summation of the prices of the stocks in the index. (*See* 1992 Order.)

[7] *See* Amex—The Standard & Poors MidCap 400 Index Option Specifications on the Amex Web site at: *http://www.amex.com* and the S&P Web site at: *http://www.standardandpoors.com.* The product specifications and the index components, as well as select data related to the components, shall be listed on the ISE Web site at *http://www.iseoptions.com.*

[8] The S&P MidCap 400 is calculated for S&P by Kinetic Information Systems. Reuters' Bridge Data Division also calculates the S&P MidCap 400, and its calculation is used in the event that the Kinetic Information Systems' calculation of the Index value is unavailable.

[9] The Index is disseminated by Amex over the Consolidated Tape Association's Network B. ISE will also disseminate every fifteen seconds the Index to its members. The Index is published daily in, among other places, The Wall Street Journal (''WSJ'') and The New York Times, and is available during trading hours from quotation vendors such as Reuters and Bloomberg. The Index criteria for inclusion or exclusion of components from the Index, attached as Exhibit 2, is included in a

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calculate the Index, the sum of the market value of the stocks in the Index is divided by the base period market value (divisor), and the result is multiplied by 100. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect such events as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings, and other capitalization changes.

The Index value for purposes of settling S&P MidCap 400 options (''Settlement Value'') is calculated on the basis of opening market prices on the business day prior to the expiration date of such options (''Settlement Day'').[10] The Settlement Day is normally the Friday preceding ''Expiration Saturday.''[11] In the event that a component security in the Index does not trade on Settlement Day, the closing price from the previous trading day is used to calculate the Settlement Value. Accordingly, trading in S&P MidCap 400 options will normally cease on the Thursday preceding an Expiration Saturday.

In order to ensure that the S&P MidCap 400 contains a representative sample of the stocks that represent the performance of the middle-capitalization segment of the market, S&P selects component securities based on the following market and economic criteria.[12] First, the company's market capitalization must be between $1 billion and $4 billion.[13] Second, the company must have adequate liquidity and reasonable price (the ratio of annual dollar value traded to market capitalization should be 0.3 or greater).[14] Third, corporate insiders must not hold stock representing more than 60% of the value of the company, and the company cannot have 50% or more of its stock held by other corporations.[15]

In addition, S&P considers industry group representation in selecting stocks for the S&P MidCap 400. Moreover, in order to avoid ''overweighting'' of utility and financial stocks, electric utilities and regional bank stocks are selected on the basis of their geographic representation as well as the above criteria.[16] Finally, any stocks already in the S&P 500 Stock Index are excluded from the S&P MidCap 400. Then, the components selected are weighted by market capitalization.[17]

The Exchange shall notify the Market Regulation Division of the Commission immediately in the event S&P determines to cease maintaining or calculating the Index. In the event the Index ceases to be maintained or calculated, the Exchange may determine not to list any additional series for trading or limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications. The Exchange states that the S&P MidCap 400 is a broad-based index, as defined in ISE Rule 2001(j). The Exchange proposes that the contract specifications for Index options listed on the Exchange will be identical to the contract specifications for the Index options listed on Amex. Accordingly, Exchange rules that are applicable to the trading of options on broad-based indexes will apply to the trading of options on the Index.[18] Specifically, among others, Exchange rules governing margin requirements and trading halt procedures that are applicable to the trading of broad-based index options will apply to options traded on the Index. In addition, the Exchange shall establish position limits of 45,000 contracts on the same side of the market, provided no more than 25,000 of such contracts are in the nearest expiration month series and no more than 25,000 of such contracts are used for index arbitrage. The product specifications of the options on the Index proposed to be traded on the Exchange will be identical to the product specifications of the options on the Index traded on Amex. Specifically, options on the Index are European-style and cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in ISE Rule 2008(a), will apply to Index options. Index options listed on Amex also trade from 9:30 a.m. to 4:15 p.m., New York time.

The minimum customer margin for uncovered writers shall be 100% of the market value of the option plus 15% of the aggregate Index value less any out-of-the-money amount, subject to a minimum of 100% of the market value of the option plus 10% of the aggregate Index value.

The Exchange proposes to use strike price intervals of 2½ points for certain near-the-money series in near-term expiration months when the Index is at a level below 200, and 5 point strike price intervals for other options series with expirations up to one year, and 25 to 50 point strike price intervals for longer-term options. The Exchange also proposes to list S&P MidCap 400 options in the four consecutive near-term expiration months plus two successive expiration months in the March cycle. For example, consecutive expirations of January, February, March and April plus June and September expirations would be listed. In addition, longer-term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options based on the full-value of the Index, the Exchange may instead list long-term, reduced-value put and call options based on one-tenth (1/10th) of the Index's full value. In either event, the interval between expiration months for either a full-value or reduced-value long-term Index option will not be less than six

document entitled *Standard & Poor's U.S. Indices: the S&P MidCap 400 and S&P SmallCap 600* dated April 8, 2004 available on the S&P Web site at *http://www.standardandpoors.com.* In particular, the Standard & Poor's requires that a component be an ''operating company and not a closed-end fund, holding company, partnership, investment vehicle or royalty trust.'' Also, ''Real Estate Investment Trusts are eligible for inclusion in [the Index].''

[10] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[11] For any given expiration month, the Index Options will expire on the third Saturday of the month.

[12] S&P makes four major weighting adjustments during the year, usually near the end of a calendar quarter and monitors each S&P MidCap 400 component stock on a daily basis for individual weighting adjustments and for corporate actions which may have an impact on the Index. (*See* 1992 Order.)

[13] *See* S&P's U.S. Indices: the S&P 500, S&P MidCap400 and S&P SmallCap 600 (November 17, 2003) on the S&P Web site at: *http://www.standardandpoors.com.*

[14] The liquidity ratio is determined by dividing a company's trading volume for the previous 12 months by the average number of total common shares outstanding. For example, if a company's average monthly trading volume over the previous 12 months was 500,000, and there were 12 million shares outstanding, then the company's liquidity ratio would be 0.50. (*See* 1992 Order.)

[15] S&P, in making the determination as to whether a company has 50% or more of its stock held by other corporations, includes in its determination investment companies with greater than 5% ownership, but does not include broker-dealers holding shares in ''street name.'' (*See* 1992 Order.)

[16] In addition, some potential companies are eliminated from inclusion in the S&P MidCap 400 for various reasons. For example, investment companies, such as closed-end mutual funds, are not included in the Index because their equity performance reflects the performance of a portfolio of securities rather than industry or company specific fundamentals. In addition, foreign companies are not included in the Index, except for some Canadian industrial companies which conduct a significant proportion of their business within the U.S. market and for which the majority of trading activity occurs on U.S. exchanges. Moreover, S&P excludes real estate investment companies and other investment trusts that allow investors to participate indirectly in the performance of real assets such as commercial or residential property. Finally, S&P excludes limited partnerships because their ownership and capitalization structure exposes investors to liabilities and tax treatment not found in corporate equity securities. (*See* 1992 Order.)

[17] Telephone Conversation between Joseph Ferraro, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission, on April 15, 2004.

[18] *See* Exchange Rules 2000 through 2012.

months. The trading of any long-term Index options will be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules. Position limits on reduced-value long-term Index options will be equivalent to the position limits for regular (full-value) Index options and will be aggregated with such options. For example, if the position limit for the full-value options on the Index is 45,000 contracts on the same side of the market (as they currently are on Amex), then the position limit for the reduced-value options will be 450,000 contracts on the same side of the market.

Surveillance and Capacity. The Exchange has an adequate surveillance program in place for Index options and intends to apply those same program procedures that it applies to the Exchange's other index options (at present, options on the S&P SmallCap 600 Index and Morgan Stanley Technology Index). Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement (dated June 20, 1994). The members of the ISG include all of the U.S. registered stock and options markets: the Amex, the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the NASD, the NYSE, the Pacific Exchange, Inc. (''PSE'') and the Philadelphia Stock Exchange, Inc. (''PHLX''). The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange states that it has the necessary systems capacity to support new series that will result from the introduction of S&P MidCap 400 Index options. ISE has also been informed that the Options Price Reporting Authority believes that it has the capacity to support such new series.

2. Statutory Basis

The ISE believes that the proposed rule change, as amended, is consistent with and furthers the objectives of section 6(b)(5) of the Act,[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, ISE states that the proposed rule change will permit trading in options based on the S&P MidCap 400 pursuant to rules designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principals of trade.

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

The ISE does not believe that the proposed rule change, as amended, will result in 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

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2004–08 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–ISE–2004–08. 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–ISE–2004–08 and should be submitted on or before June 9, 2004.

IV. Commission's Findings and Order Granting Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[20] The Commission finds that the trading of options on the Index, including full-value and reduced-value Index LEAPS, will permit investors to participate in the price movements of the 400 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively. Accordingly, the Commission believes MidCap 400 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the middle-capitalization range of U.S. equity securities.

The trading of MidCap 400 options, however, raises several issues, namely, issues related to index classification, index design, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the ISE has adequately addressed these issues.

A. Broad-Based Index

The Commission finds that classifying the Index as broad-based, and, thus,

[19] 15 U.S.C. 78(f)(b)(5).

[20] 15 U.S.C. 78f(b)(5) (1988).

permitting Exchange rules applicable to the trading of broad-based index options to apply to MidCap 400 options is appropriate. Specifically, the Commission believes it is consistent with the Act to designate the Index as broad-based because the MidCap 400 reflects a substantial segment of the U.S. equities market, in general, and mid-level capitalized U.S. securities, in particular. The Index consists of 400 of the most actively traded middle-capitalized securities in the United States.[21] In addition, as of January 6, 2004, the total capitalization of the Index was approximately $962.075 billion. The MidCap 400 also includes stocks of companies from ten market sectors, no one of which dominates the Index.[22] Moreover, the Index represents a broad cross-section of domestic mid-level capitalized stocks, with no single stock comprising more than 1.23% of the Index's total value (as of January 6, 2004). The percentage weighting of the five largest components in the Index also accounts for only 4.66% of the Index's value. Finally, 344 (86%) of the 400 stocks included in the Index, representing 88.1% of the total weight of the Index, are the subject of standardized options trading, and many of the other Index component stocks are eligible for options trading (as of January 6, 2004).

B. Index Design and Structure

The broad diversification, large capitalization, and liquid markets of the Index's component stocks significantly minimizes the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic mid-level capitalized stocks, with no single industry group or stock dominating the Index. Second, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 437,107 and 724,445 shares, respectively.[23]

Third, S&P has developed procedures and criteria designed to ensure that the Index maintains its broad representative sample of stocks in the middle-capitalization range of securities.[24] Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of a small number of issues would affect significantly the Index's value.

C. Surveillance

The Exchange represents that it has an adequate surveillance program in place for the Exchange's other index options (at present, options on the S&P SmallCap 600 Index) and intends to apply those same program procedures to the options on the Index. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG''), which allows for the sharing of surveillance information for potential intermarket trading abuses pursuant to the Intermarket Surveillance Group Agreement (the ''Agreement'').[25] The members of the ISG include all of the U.S. registered stock and options markets. The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchanges trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.

D. Market Impact

The Commission believes that the listing and trading of MidCap 400 options, including LEAPS and reduced-value LEAPS, on the Exchange will not adversely impact the underlying securities markets. First, as described above, the Index is broad-based and no one stock or industry group dominates the Index. Second, as noted above, the stocks contained in the Index have large capitalizations and are actively traded. Third, existing ISE stock index options rules and surveillance procedures will apply to MidCap 400 options. Fourth, the Exchange has established position and exercise limits for the MidCap 400 options that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like other standardized options traded in the United States.

Finally, the Commission believes that the ISE's other proposed rule changes to accommodate the trading of S&P MidCap 400 options, such as strike price intervals, are consistent with the Act. Based on representations from the ISE, the Commission also believes that the Exchange will have sufficient capacity to accommodate the anticipated order flow. The Commission also believes the Amex's proposed expiration cycle for the S&P MidCap 400 options is reasonable because it provides investors sufficient flexibility to establish their desired options positions.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change, as amended, (SR–ISE–2004–08) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

J. Lynn Taylor,

Assistant Secretary.

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[21] Specifically, the mean and median capitalization for the 400 companies, as of January 6, 2004, was $ 2.4 billion and $ 2.1 billion, respectively.

[22] Specifically, as of February 26, 2004, the ten market sectors along with their respective weighting in the Index was as follows: (1) energy, 5.5%; (2) materials, 6.3%; (3) industrials, 14.5%; (4) consumer discretionary, 16.3%; (5) consumer staples, 4.5%; (6) health care, 9.5%; (7) financials, 16.5%; (8) information technology, 19%; (9) telecommunications services, 0.8%; and (10) utilities, 7.3%.

[23] For the six-month period ending January 2004, 398 of the 400 (99.5%) companies within the Index had an average daily trading volume greater than 30,000 shares per day. Those companies represent 99.25% of the market capitalization of the Index. The average daily trading volume of the 20 most heavily traded companies in the Index, representing 7.51% of the market capitalization of the Index, was 3,784,032 shares per day.

[24] *See supra* notes 11–14 and accompanying text.

[25] ISG was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The participation of exchanges within the ISG and their sharing of surveillance information is governed by the Agreement. The most recent amendment to the Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by members January 29, 1990. *See* Second Amendment to Intermarket Surveillance Group Agreement, January 29, 1990.

[26] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49688; File No. SR–NASD–2003–163]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Voluntary Direct Communication Between Parties and Arbitrators

May 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. On February 23, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] 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

NASD Dispute Resolution is proposing a new rule of the NASD to permit parties in an arbitration to communicate directly with the arbitrators if all parties and arbitrators agree, and to establish guidelines for such direct communication. Below is the text of the proposed rule change. Proposed new language is in italics.

10334. Direct Communication Between Parties and Arbitrators

(a) This rule provides procedures under which parties and arbitrators may communicate directly.

(b) Only parties that are represented by counsel may use direct communication under this Rule. If, during the proceeding, a party chooses to appear pro se (without counsel), this Rule shall no longer apply.

(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.

(d) Parties may send the arbitrators only items that are listed in an order.

(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.

(f) Copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.

(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.

(h) Parties may not communicate orally with the arbitrators outside the presence of all parties.

(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.

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

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

NASD proposes a rule that would permit direct communication with the arbitrators where all parties and arbitrators agree. The rule also would establish guidelines for direct communication.

Background. Under normal procedures, parties may exchange certain documents among themselves (such as those relating to discovery), but must address all communications intended for the arbitrators to NASD staff, who then forward the communications to the arbitrators. If the communication includes a motion or similar request, staff members customarily solicit a response from the other parties before forwarding the motion or request. Similarly, the arbitrators transmit their orders and any other communications through the staff.

In response to a recommendation of the NASD National Arbitration and Mediation Committee, the Chicago Office of NASD Dispute Resolution began a pilot project in June 2001 to determine whether direct communication between parties and arbitrators would enhance the arbitration process. The Chicago Office developed the parameters governing whether a case would be eligible for inclusion in the pilot and changed the script used by the panel chairperson at the Initial Prehearing Conference (''IPHC'') on those cases. A modified IPHC Order also was given to the panel chairperson to memorialize all direct communication matters agreed to by the parties and the arbitrators.

In total, 839 cases were eligible for inclusion in the project. Of these cases, parties and arbitrators in 255 cases (30%) participated in the program. At the end of the one-year pilot period, staff formulated a survey for those arbitrators and party representatives who participated in the pilot project. NASD Dispute Resolution sent out 850 surveys and obtained 268 responses (32%). Although attempts were made to limit duplication, certain arbitrators and party representatives who participated in more than one eligible case in the pilot might have sent in multiple survey responses.

Of the responses NASD received, 193 came from arbitrators and 75 from party representatives. Overall, 73% of party representatives and 69% of the arbitrators who responded to the survey favored continuing direct communication with the arbitrators. Favorable comments reflected the opinion that direct communication expedited the arbitration process and was more convenient than the normal method of communicating through staff.

In light of the success of the Chicago pilot, NASD has developed a nationwide rule that would permit direct communication with the arbitrators where all parties and arbitrators agree. The rule also would establish guidelines for direct communication.

On October 2, 2002, the Securities Industry Conference on Arbitration (''SICA'')[4] adopted an amendment to Rule 23 of the Uniform Code of Arbitration that provides for joint administration of arbitrations by the arbitrators and the parties.[5] Like the

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

[2] 17 CFR 240.19b–4.

[3] See letter from Jean Feeney, Vice President and Chief Counsel, Dispute Resolution, NASD to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated February 20, 2004.

[4] SICA's voting members include representatives of the self-regulatory organizations that administer arbitration forums, the Securities Industry Association, and three members of the public. In addition, staff of the SEC, the Commodity Futures Trading Commission, the American Arbitration Association, the North American Securities Administrators Association, and the former public members of SICA are invited to attend meetings.

[5] The joint administration amendment is found in section 23(e) of the Uniform Code, which is included in the Twelfth Report of the Securities Industry Conference on Arbitration (October 2003), available on the NASD Dispute Resolution Web site, under both Resources for Parties and Resources for Neutrals.

NASD proposal, the SICA rule would apply only to matters in which all parties are represented by counsel, and in which the arbitrators and all parties agree to proceed under the rule; terminates if a party chooses to appear without counsel; prohibits oral communication between parties and arbitrators unless all parties are present; and requires parties to send written materials to the arbitrators and the director at the same time and in the same manner. Unlike the NASD proposal, the SICA rule would allow the arbitrators, without the assistance of the sponsoring self-regulatory organization, to ''schedule all pre-hearing and hearing dates, the timing of the service and filing of appropriate papers, all discovery matters and all other matters relevant to the expeditious handling of the case.'' The SICA rule allows the parties or the arbitrators to initiate conference calls under certain conditions; requires that parties send the director proof of service of written materials; and provides that the arbitrators may terminate or modify any joint administration order. The NASD rule, unlike the SICA rule, provides that parties may send the arbitrators only items that are listed in an arbitrator order; that materials that exceed 15 pages may only be sent to the director by regular mail or overnight courier; and that any party or any arbitrator may terminate the direct communication order. NASD understands that the SICA rule change has not been adopted by any self-regulatory organization. The National Arbitration and Mediation Committee and the Board were apprised of the SICA amendment, but determined to model the NASD proposal on the successful Chicago pilot described above.

Proposed Rule Change. The proposed rule is based largely on procedures used in the Chicago pilot, with a few changes to reflect staff's experience with the pilot and to provide for possible issues that might occur in a larger-scale application of the rule. Only parties that are represented by counsel may use direct communication under the proposed rule. If, during the proceeding, a party chooses to appear pro se (without counsel), the rule will no longer apply. All arbitrators and all parties must agree to the use of direct communication before it can be used. The scope of direct communication will be set forth in an arbitrator order, and parties may send the arbitrators only the types of items that are listed in the order.

The proposed rule provides that either an arbitrator or a party may rescind his or her agreement at any time if direct communication is no longer working well. Materials must be sent at the same time and in the same manner to all parties and the Director (through the assigned staff member), and staff must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators. As requested by staff of NASD Dispute Resolution, however, the rule contains a provision stating that materials more than 15 pages long shall be sent to the Director only by mail or courier, to avoid tying up busy fax machines and printers. Arbitrators (or parties) with similar concerns could include a similar provision as to themselves in the direct communication order. NASD will prepare a template for direct communication orders to guide the arbitrators and parties in considering these issues.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that permitting direct communication with the arbitrators where all parties and arbitrators agree, and where specific guidelines are followed, will protect investors and the public interest by expediting the arbitration process and giving parties more control over their arbitration cases.

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

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

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

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

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

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–NASD–2003–163

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–NASD–2003–163. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–

[6] 15 U.S.C. 78o–3(b)(6).

2003–163 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11258 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49682; File No. SR–NYSE–2004–09]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 To Amend NYSE Rule 123C Relating to Market-on-Close Policy and Expiration Procedures

May 11, 2004.

I. Introduction

On February 19, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 123C relating to Market-on-Close Policy and Expiration Procedures. The proposed rule change was published for comment in the **Federal Register** on April 1, 2004.[3] The Commission received no comments on the proposal.

On April 26, 2004, the Exchange amended the proposed rule change.[4] Amendment No. 1 adds ''LOC'' to the first sentence of section (3)(B) of NYSE Rule 123C, which was inadvertently excluded from the rule text of the Exchange's original filing.

This order approves the proposed rule change. Simultaneously, the Commission provides notice of filing of Amendment No. 1 and grants accelerated approval of Amendment No. 1.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

The Commission believes the electronic entry of all market-on-close (''MOC'') and limit-on-close (''LOC'') orders may allow market participants greater control in active trading crowds, and may enhance the dissemination of accurate information to all participants, because publications will be systematically generated. Furthermore, the Commission believes that moving the MOC and LOC deadline from 3:40 p.m. to 3:50 p.m. may allow traders and floor brokers greater control over the execution of customer orders and greater participation in active markets. The Exchange stated that its electronic entry systems for MOC and LOC order processing would require technology upgrades. Accordingly, the Exchange has represented that it will notify the Exchange membership and the Commission of the timing and implementation of such electronic entry systems.

For these reasons, the Commission finds that the proposed rule change is consistent with the Act.[7]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 added ''LOC'' to the first sentence of section (3)(B) of NYSE Rule 123C. Since Amendment No. 1 makes only a technical change to the proposed rule text, the Commission finds good cause to accelerate approval of Amendment No. 1 to the proposed rule change.[8]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–09 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–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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–2004–09 and should be submitted on or before June 9, 2004.

[7] 17 CFR 200.30–3(a)(12)

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49476 (March 25, 2004), 69 FR 17255.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 26, 2004 (''Amendment No. 1''). In Amendment No. 1, the NYSE corrected a typographical error. Additionally, the NYSE confirmed that by making this correction to paragraph (3)(B) of the proposed rule language, the NYSE clarifies what is established NYSE practice where there is no order imbalance. Amendment No. 1 does not expand the scope of the proposed rule change, but instead only clarifies rule language that represents existing practices at the NYSE. *See,* telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Joseph P. Morra, Special Counsel, Division, Commission, dated May 10, 2004.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See* footnote 4, *supra.*

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2004–09) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11257 Filed 5–18–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49681; File No. SR–PCX–2003–51]

Self-Regulatory Organizations; Notice of Filing and Amendments No. 1, 2, and 3 Thereto of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Conditions of PCX Membership

May 11, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On December 18, 2003, the Exchange filed Amendment No. 1.[3] On March 15, 2004, the Exchange filed Amendment No. 2.[4] On April 23, 2004, the Exchange filed Amendment No. 3.[5] The Commission is publishing this notice to solicit comments, as amended, 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 PCX proposes to amend its rules regarding the Exchange's conditions to membership. Specifically the Exchange proposes to (1) modify rules relating to PCX administered examinations for Floor Brokers and Market Makers; and (2) adopt a rule permitting waiver of the examination requirements by the Membership Committee. The text of the proposed rule change appears below. New text is italicized, and deleted text is in brackets.

Rules of the Board of Governors of the Pacific Exchange, Inc.

Rule 1 Memberships

Denial of and Conditions to Membership

Rule 1.7(b) (1–8)—No change.

(9) does not successfully complete [such written proficiency] examinations as required by the Exchange to [enable it to examine and] verify the applicant's qualifications to function in [one or more of the] capacities *covered by the application* [applied for];

Series 7 Requirement for Off-Floor Traders

(A) *All* [T] *t*raders of member organizations for which the Exchange is the Designated Examining Authority (''DEA'') must successfully complete the General Securities Registered Representative Examination Test, Series 7, [if the primary business of the member organization involves the trading of securities that is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker. The following are exempt from the requirement to successfully complete the Series 7 Examination: Exchange members who] *except for individuals who* are performing the function of a [registered specialist,] registered market maker (*pursuant to Rule 6.33),* [or] registered floor broker (pursuant to Rule[s 5.27(a), 6.33 or] 6.44[, respectively]) and associated persons of member firms who facilitate the execution of stock transactions for the accounts of options market makers.

For purposes of this Rule:

(i) The term ''trader'' means a person who is directly or indirectly compensated by an Exchange member organization and who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities.[; and

(ii) The term ''primary business'' means greater than 50% of the member organization's business.

(B) Each member organization for which the Exchange is the DEA must complete, on an annual basis, and on a form prescribed by the Exchange, a written attestation as to whether the member organization's primary business is conducted in the performance of the function of a registered specialist, a registered market maker or a registered floor broker (pursuant to Rules 5.27(a), 6.33 or 6.44, respectively).

(C) The requirement to complete the Series 7 Examination will apply to current Traders of member organizations that meet the criteria of subsection (A), above, as well as to future Traders of member organizations that meet the criteria of subsection (A), above, at a later date. Traders of member organizations that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Exchange.]

Rule 1.7(b)(10–12)—No change.

Rule 1.7(c)

Prior to admission to the trading floor or participation on any trading system, all applicants are required to complete an Exchange Orientation Program. The Membership Committee may waive [or modify] a required examination [for any applicant if,] *under the following conditions:*

(1) [within two years of the date such applicant applied to the Exchange for membership, such] *an* applicant *for registration as a Market Maker pursuant to Rule 6.33* [has] *must have* successfully completed *the Series 44 Examination within five years of the application date for Exchange membership and the applicant must have been a member of the Exchange within six months of the application date for Exchange membership.* [a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.]

(2) an applicant for registration as a Floor Broker pursuant to Rule 6.44 must have successfully completed the Series 45 Examination within five years of the application date for Exchange membership and the applicant must have been a member of the Exchange within six months of the application date for Exchange membership.

(3) an applicant for Exchange membership must have successfully completed an equivalent examination administered by a self-regulatory organization within five years of the application date for Exchange membership and the applicant must

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[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

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

[2] 2 CFR 240.19b–4.

[3] *See* Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 17, 2003 (''Amendment No. 1''). Amendment No. 1 replaced the originally filed proposal in its entirety.

[4] *See* Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2004 (''Amendment No. 2''). Amendment No. 2 replaced Amendment No. 1 in its entirety.

[5] *See* Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division, Commission, dated April 22, 2004 (''Amendment No. 3''). Amendment No. 3 replaced Amendment No. 2 in its entirety.

have been a member of any self-regulatory organization within six months of the application date for Exchange membership.

(4) in the opinion of the Membership Committee, appropriate basis for an exemption from a required examination exists based on the following standards of evidence regarding an applicant's qualifications:

(A) length and quality of securities industry experience or professional experience in investment related fields;

(B) specific registration requested by the applicant and type of business to be conducted in relation to the applicant's experience;

(C) previous registration history with the Exchange and nature of any pre-existing regulatory matters; and

(D) other examinations (e.g., Series 7 Examination) taken by the applicant that may be acceptable substitutes in conjunction with securities industry experience.

Within fifteen calendar days after the Membership Committee meets to review a request for a waiver of the examination requirement, the Membership Committee shall provide the applicant with a written determination of whether the waiver was granted or denied. If the Membership Committee denies the request for a waiver, the notice shall include a statement with the reasons for the denial. An applicant whose request for a waiver is denied may appeal the decision of the Membership Committee in accordance with the terms and conditions of Rule 11.7.

Rule 1.7*d–f* [c–e]—No change.

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

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 Purpose

1. Purpose

The PCX reviewed its examination requirements for Floor Brokers and Market Makers relative to those of other options exchanges. In doing so, the PCX believes that its current membership testing requirements are more restrictive than the requirements of other exchanges.[6]

Therefore, the Exchange is proposing to amend its Rule 1.7(b) and 1.7(c). The proposed rules will extend the time period when a former member of the PCX or another self-regulatory organization may have taken an examination from two years to five years so long as the applicant has been a member of an Self-Regulatory organization within six months of the application date for Exchange membership.[7] In addition, the proposal allows the Membership Committee to waive the examination requirement if the Committee believes the applicant is qualified based upon the applicant's industry experience, the type of registration requested, the previous history of the applicant with the PCX and any other examinations the applicant has successfully completed that may be considered acceptable substitutes. The proposed changes will bring the PCX examination requirements up to date and make the PCX's requirements similar to those at other SROs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

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

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

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

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

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–PCX–2003–51.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–PCX–2003–51. 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

[6] According to PCX, the following SROs place no restriction on the amount of time within which an applicant must have successfully completed an examination to be eligible for membership: the Philadelphia Stock Exchange (*See* Rule 620(a) & (b)), the American Stock Exchange (*See* Rule 353) and the Boston Stock Exchange (*See* Rule Chapter 15, Section (1)(b)(3)). In addition, NASD Rule 1070 permits the NASD to grant waivers of applicable qualification examinations. The PCX proposal requires that an applicant have successfully completed an examination within five years and have been a member of an SRO within six months of applying for PCX membership. The PCX Membership Committee may waive the examination requirement for individuals who have not successfully completed an examination within five years and/or have not been a member of an SRO within six months of applying for PCX membership, but only if the applicant is deemed qualified based upon a list of very specific criteria.

[7] To determine whether the proposed rule applies to a particular applicant, the PCX will first review whether the applicant has been a member of an SRO within six months of applying for PCX membership. If the applicant has been a member of an SRO within six months of applying for PCX membership, then the PCX will review whether the applicant has passed an appropriate examination within five years of the application date for Exchange membership.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78(b)(5).

Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2003–51 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11256 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49690; File No. SR–Phlx–2004–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Trading Hours of Canadian Dollar Foreign Currency Options

May 12, 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 16, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On April 19, 2004, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Phlx proposes to modify its hours of business for dealings upon the Exchange to change the opening of Canadian dollar foreign currency options (''FCO'') trading from 7 a.m. eastern time (e.t.) to 2:30 a.m. e.t.

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

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to conform the trading hours of Canadian dollar FCOs to the trading hours of other FCOs.[4] This proposed rule change is to provide notification of the proposal to modify the hours of business for dealings in Canadian dollar contracts.[5] The Exchange previously filed a proposed rule change to amend Phlx Rule 101, which provides that FCO trading sessions shall be conducted at such times as the Phlx Board of Governors shall specify between 6 p.m. Sundays and 3 p.m. Fridays.[6] In connection with the proposed rule change amending Phlx Rule 101, the Exchange committed to make future filings under section 19(b)(3)(A) of the Act,[7] any time it expands or changes FCO trading hours in connection with Phlx Rule 101.[8]

The Exchange believes that the increased trading hours should allow investors greater access to trading in Canadian dollar FCOs and increased flexibility to meet the exchange rate risk protection and hedging needs of European-based market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest.

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

The Phlx does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

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

No written comments were either solicited or received with respect to the proposed rule change, as amended.

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

Because the foregoing proposed rule change, as amended, has been designated as a practice with respect to the administration of an existing rule, it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [11] and

[3] *See* letter from Angela Saccomandi Dunn, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 16, 2004 (''Amendment No. 1''). In Amendment No. 1, the Phlx corrected a typographical error in the original filing. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 19, 2004, the date the Phlx filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] In 1993, Phlx filed a proposed rule change to amend Rule 101 to provide that all FCO trading, except FCOs on the Canadian dollar, will be conducted between 1:30 a.m. ET and 2:30 p.m. ET each business day. *See* Securities Exchange Act Release No. 33246 (November 24, 1993), 58 FR 63421 (December 1, 1993) (File No. SR–Phlx–93–42). Subsequently, the trading hours were modified to move the opening of FCO trading from 1:30 a.m. ET to 2:30 a.m. ET for all Phlx-listed FCOs except the Canadian dollar. *See* Securities Exchange Act Release No. 34898 (October 26, 1994), 59 FR 54651 (November 1, 1994) (File No. SR–Phlx–94–47).

[5] The Exchange has represented that it intends to notify its membership of the change in trading hours for Canadian dollar FCOs through a circular to members. Telephone conversation between Angela Saccomandi Dunn, Counsel, Phlx, and Marisol Rubecindo, Law Clerk, Division, Commission, on May 4, 2004.

[6] *See* Securities Exchange Act Release No. 26087 (September 16, 1988), 53 FR 36930 (September 22, 1988) (File No. SR–Phlx–88–25).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] *See* Securities Exchange Act Release No. 26087 (September 16, 1988), 53 FR 36930 (September 22, 1988) (File No. SR–Phlx–88–25).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

Rule 19b–4(f)(1)[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–Phlx–2004–24 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–Phlx–2004–24. 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 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2004–24 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11260 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49697; File No. SR–Phlx–2004–18]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Make Permanent a Pilot Program Relating to the Book Sweep Function of the Exchange's Automated Options Market System

May 13, 2004.

I. Introduction

On March 1, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to make permanent a pilot program relating to a current enhancement to the Exchange's Automated Options Market (''AUTOM'') System,[3] which is designed to automatically execute limit orders on the book when the bid or offer generated by the Exchange's Auto-Quote[4] system (or by a proprietary quoting system called ''Specialized Quote Feed'' or ''SQF'')[5] locks or crosses a limit order on the book, thus rendering such limit order marketable. The proposed rule change was published for comment in the **Federal Register** on March 11, 2004.[6] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description

On September 29, 2003, the Commission approved a six-month pilot enhancement to the Exchange's AUTOM system, called Book Sweep.[7] The Book Sweep pilot was subsequently extended until the earlier of July 1, 2004 or such time as the Commission approves the Book Sweep feature on a permanent basis.[8] The Exchange now seeks permanent approval of the Book Sweep pilot.

Book Sweep allows certain orders resting on the limit order book[9] to be automatically executed when the bid or offer generated by the Exchange's Auto-Quote system (or by the SQF) locks (*i.e.*, $1.00 bid, $1.00 offer) or crosses (*i.e.*, $1.05 bid, $1.00 offer) the Exchange's best bid or offer in a particular series as established by an order on the limit order book. Orders executed by the Book Sweep feature are allocated among crowd participants participating on the Wheel.[10] If Book Sweep is not engaged at the time the Auto-Quote or SQF bid or offer matches or crosses the Exchange's best bid or offer as represented by a limit order on the book,[11] the specialist may manually engage Book Sweep so that certain orders in the limit order book can be automatically executed. Prior to the deployment of Book Sweep, when the Auto-Quote or SQF bid or offer locked or crossed a booked order, the specialist handled the execution manually after being alerted by the system that one or more limit orders on the book have

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

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[4] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[5] *See* Exchange Rule 1080, Commentary .01(b)(i).

[6] *See* Securities Exchange Act Release No. 49365 (March 4, 2004), 69 FR 11690.

[7] *See* Securities Exchange Act Release No. 48563 (September 29, 2003), 68 FR 57724 (October 6, 2003) (SR–Phlx–2003–30).

[8] *See* Securities Exchange Act Release No. 49459 (March 23, 2004), 69 FR 16629 (March 30, 2004) (SR–Phlx–2004–21).

[9] The electronic ''limit order book'' is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Exchange Rule 1080, Commentary .02.

[10] The ''Wheel'' is a feature of AUTOM that allocates contra-party participation respecting automatically executed trades among the specialist and registered options traders signed onto the Wheel for that listed option. *See* Exchange Rule 1080(g). *See also* Option Floor Procedure Advice F–24.

[11] Book Sweep would be engaged when AUTO–X is engaged, and would be disengaged when AUTO–X is disengaged. *See* Exchange Rule 1080(c)(iii).

become marketable and are due an execution.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[12] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[13]

The Commission notes that permanent approval of Book Sweep, which has been operating on a pilot basis for over six months, should help facilitate the more efficient execution of orders when Auto-Quote or SQF locks or crosses the Exchange's best bid or offer in a series, as established by an order on the limit order book. The Commission notes that the Exchange's Book Sweep system is similar to systems that the Commission has previously approved for use on other exchanges.[14] In addition, the Commission notes that the proposed rule change does not alter Phlx members' duty to comply with the Commission's rule relating to the firmness of quotations.[15] The trading crowd, as the responsible broker or dealer, would continue to be required to honor its disseminated quote.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–2004–18) be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11311 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

[12] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See, e.g.*, Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (SR–CBOE–00–22) (Order approving CBOE Autoquote Triggered EBook Execution system).

[15] 17 CFR 240.11Ac1–1.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49693; File No. SR–Phlx–2004–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Specialist Unit Fixed Monthly Fees

May 12, 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 Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The proposed rule change has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to amend its schedule of dues, fees and charges to cap the current specialist unit fixed monthly fee (''fixed monthly fee'')[5] at $310,000 per specialist unit per month for transactions settling on May 1, 2004 through August 31, 2004. The proposed $310,000 monthly fee cap would not include the Nasdaq-100 Index Tracking Stock (''QQQ'')[SM][6] license fee of $0.10 per contract side for specialist unit transactions in the QQQ equity options.

Currently, the Exchange offers specialist units[7] the opportunity to elect to pay a fixed monthly fee in lieu of paying fees currently in effect for equity option and index option transaction charges and the equity option specialist deficit (shortfall) fee (''shortfall fee'').[8] In addition to the fixed monthly fee, a $0.10 charge per contract side for specialist unit transactions in the QQQ equity options (''QQQ license fee'') is imposed, if applicable, if the specialist unit elects to pay the fixed monthly fee.[9] The current fixed monthly fee and QQQ license fee are scheduled to be in effect through August 31, 2004.[10] Pursuant to this proposal, specialist units that have elected to pay the fixed monthly fee as described above and reach the proposed $310,000 monthly fee cap would pay $310,000 per month plus a QQQ license fee, if applicable.

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

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to limit the amount of fixed monthly fees incurred per specialist unit per month. The current fixed monthly fee and the proposed $310,000 monthly fee cap should create an

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR–Phlx–2004–17).

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking Stock[SM], and QQQ[SM] are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust[SM], or the beneficial owners of Nasdaq-100 Shares[SM]. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] The Exchange uses the terms ''specialist'' and ''specialist unit'' interchangeably herein.

[8] The fixed monthly fee program does not affect additional charges, such as non-transaction and membership-related charges listed on Appendix A of the Exchange's schedule of dues, fees and charges. *See* Securities Exchange Act Release Nos. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR–Phlx–2003–61); and 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR–Phlx–2004–17).

[9] The $0.10 fee does not apply if the specialist unit elects to pay the current equity option and index option transaction charges and the applicable shortfall fees.

[10] *See* Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR–Phlx–2004–17).

incentive for specialist units to bring in more business, above the fixed monthly fee amount, which would be free of additional transaction charges assessed on specialist units, while protecting the Exchange's revenue base. Additional order flow may generate transaction fees on the contra side that, in turn, may generate additional revenue for the Exchange. In addition, the proposed $310,000 monthly fee cap has the potential to attract additional specialist units to the Exchange's trading floor.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act [11] in general, and furthers the objectives of section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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 not necessary or appropriate in furtherance of purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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 Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–Phlx–2004–30 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–Phlx—2004–30. 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 Phlx. 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–Phlx–2004–30 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11312 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notices with a 60-day comment period soliciting comments on the following collections of information were published on august 11, 2003, pages 47628–47629, and March 8, 2004, pages 10806–10807, respectively.

DATES: Comments must be submitted on or before June 18, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Certification: Pilots and Flight Instructors.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0021.

Forms(s): FAA Form 8710–1.

Affected Public: A total of 125,500 pilots and flight instructors.

Abstract: 14 CFR part 61 prescribes certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility.

Estimated Annual Burden Hours: An estimated 291,340 hours annually.

2. *Title:* Report of Inspections Required by airworthiness Directives, Part 39.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0056

Forms(s): NA.

Affected Public: A total of 1120 aircraft owners and operators.

Abstract: Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine

if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

Estimated Annual Burden Hours: A total of 2,800 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 12, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–11303 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: By **Federal Register** notice published on March 11, 2004, the National Park Service (NPS) and the Federal Aviation Administration (FAA), asked interested persons to apply to fill a vacant position representing aviation interests on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). This notice informs the public of the person selected to fill that vacancy on the NPOAG ARC.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, E-mail: *Barry.Brayer@faa.gov*, or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO 80525, telephone (970) 225–3563, or *Karen_Trevino@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the NPOAG ARC.

The NPOAG ARC provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) on commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) on other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) at the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Changes in Membership

To maintain the balanced representation of the group, the FAA and the NPS recently published a notice in the **Federal Register** asking interested persons to apply to fill a vacancy representing aviation interests on the NPOAG ARC. The person selected to fill that position is Mr. Elling Halverson, Papillon Airways, Inc. The current members of the NPOAG ARC now are Heidi Williams (general aviation), Richard Larew, Elling Halverson, and Alan Stephen (commercial air tour operations), Chip Dennerlein, Charles Maynard, Steve Bosak, and Susan Gunn (environmental interests), and Germaine White and Richard Deertrack (Indian tribes).

Issued in Washington, DC, on May 13, 2004.

Steven W. Douglas,

Acting Director, Flight Standards Service.

[FR Doc. 04–11301 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Order 8100.9A, DAS, DOA, and SFAR 36 Authorization Procedures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed revision to Order 8100.9, DAS, DOA, and SFAR 36 Authorization Procedures, implementing a new evaluation program for these organizations. This notice is necessary to give all interested persons an opportunity to present their views on the proposed policy.

DATES: Comments must be received on or before June 18, 2004.

ADDRESSES: Send all comments on the proposed revised Order to: Ralph Meyer, Delegation and Airworthiness Programs Branch, P.O. Box 26460, Oklahoma City, OK 73125. Comments may be faxed to: (405) 954–7072 or e-mailed to: *ralph.meyer@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Ralph Meyer, Aircraft Engineering Division, Airworthiness Programs Branch (AIR–140), P.O. Box 26460, Oklahoma City, OK 73125. Telephone: (405) 954–7072 or FAX: (405) 954–4104.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed revised Order by submitting such written data, views, or arguments to the address or FAX number listed above. Your comments should identify ''Order 8100.9A.'' The Associate Administrator for Regulation and Certification will consider all communications received on or before the closing date before issuing the final Order.

Background

The revision to Order 8100.9 establishes a new evaluation program to evaluate all aspects of an authorization holder's performance. Currently, these organizations are evaluated under both the Aircraft Certification Systems Evaluation Program (ACSEP) and Order 8100.9 Technical Evaluations. When

implemented, organizations will not be subject to ACSEP evaluations unless warranted by their status as a production approval holder. This proposed revised Order also incorporates the content of Order 8100.12 that pertains to Designated Alteration Station Project Limitations and it also clarifies FAA oversight requirements for delegated organizations.

How To Obtain Copies

You may get a copy of the proposed revised Order from the Internet at: *http://www.faa.gov/certification/aircraft/av-info/dst/dds.htm.* You may also request a copy from Ralph Meyer. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC, on May 12, 2004.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–11304 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17679; Notice 1]

General Motors Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM), has determined that certain 2004 model year vehicles that it produced do not comply with S5.1 of 49 CFR 571.124, Federal Motor Vehicle Safety Standard (FMVSS) No. 124, ''Accelerator control systems.'' GM has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Approximately 19,924 model year 2004 Cadillac SRX, Cadillac XLR, and Pontiac Grand Prix vehicles are affected. S5.1 of FMVSS No. 124 requires that:

There shall be at least two sources of energy capable of returning the throttle to the idle position within the time limit specified by S5.3 . . . . In the event of failure of one source of energy by a single severance or disconnection, the throttle shall return to the idle position within the time limits specified by S5.3 . . . .

In the event of failure of either of the two Electronic Throttle Control (ETC) Pedal return springs, at ambient temperatures of −30°C to −40°C for the Grand Prix and XLR and −10°C to −40°C for the SXR, the engine in some of the subject vehicles may not return to idle within the time limits specified by S5.3.

GM believes that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

Vehicle Controllability: A number of conditions must occur for the noncompliance to occur. A return spring must be severed, the stack-up of tolerances in the ETC Pedal Position Sensor must exist, the vehicle must have soaked at an ambient temperature of −30°C to −40°C for the Grand Prix and XLR and −10°C to −40°C for the SXR, and the customer must drive the vehicle prior to the vehicle interior warming up. In the extremely low likelihood of all of these conditions existing, the condition would occur upon the first application of the throttle pedal. The vehicle would continue to be controllable by steering and braking, and the ETC Pedal assembly would return to normal operation once the passenger compartment warmed up.

Pedal Assembly is Protected: When FMVSS No. 124 was established in 1973, the accelerator control systems of vehicles consisted of a mechanical connection between the accelerator pedal and the engine's carburetor. The throttle return springs required by FMVSS No. 124 were typically part of the carburetor, and subject to the harsh engine environment. The requirements of S5.1 were established to ensure that if one of those springs in that environment were to fail, the engine would return to idle in a timely manner.

The ETC Accelerator Pedal Module in the subject vehicles consists of the accelerator pedal at the end of the accelerator pedal lever. The lever is connected to the ETC Pedal Sensor shaft, and is returned to the idle position by two return springs. The ETC Pedal Sensor provides two redundant signals to the engine control module to indicate accelerator pedal position. The ETC Accelerator Pedal Module is located entirely within the passenger compartment of the vehicle. The return springs are in a protected area under the instrument panel, and are not subject to the harsh environment of the engine compartment.

Condition Requires Failed Return Spring: The condition that is described can only occur if one of the two return springs is severed or disconnected. The springs in the subject Accelerator Pedal Module, however, have extremely high reliability and are not likely to fail in the real world.

Durability Testing: The ETC Accelerator Pedal Module is designed for a service life of at least 100,000 miles or 10 years working life for passenger car application. The Minimum Typical Predicted Usage Profile of the Component Technical Specification states that the Accelerator Pedal mechanism may be subject to 35,000,000 dithers / 70,000,000 sensor direction changes. The GM Test Procedure TP3750, Accelerator Pedal Lab Durability Cycling Test, that is used during the development and validation of this system, subjects these parts to 2 million cycles, an equivalent usage greater than 6 lives for an automatic transmission passenger vehicle and 3 lives for a manual transmission passenger vehicle. There were no accelerator pedal return spring failures after testing multiple samples to 10 million cycles during the durability testing that was performed on the ETC Accelerator Pedal Module for the subject vehicles.

Condition Requires Extreme Temperatures, Pedal Assembly Warms Quickly: The root cause of the condition is an increase in friction that may occur on some ETC Accelerator Pedal Modules due to a stack-up of tolerances, but only when the Module is subjected to extreme ambient temperatures. All tests at temperatures above those extremes resulted in full compliance with the FMVSS No. 124 time limits for all pedal assemblies tested. Therefore, the ambient temperatures required for the possibility of the noncompliance to exist are severe. Even if a vehicle with a disconnected return spring soaked under the necessary harsh conditions for a sufficient time, the potential for the noncompliance to occur would exist for only a short time, because the pedal assembly would warm up quickly with activation of the vehicle heating system.

Warranty Data: GM has reviewed warranty data for these 2004 vehicles, as well as complaint data. GM is unaware of any data suggesting the subject condition is a real world safety issue.

Prior NHTSA Decision: On August 3, 1998, NHTSA granted a petition for decision of inconsequential noncompliance to GM for 1997 Chevrolet Corvettes that failed to meet the requirements of FMVSS No. 124, with respect to the requirement to return to idle in less than 3 seconds at −40°C.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on

''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 18, 2004.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: May 14, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–11307 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34496]

Progressive Rail, Incorporated—Lease and Operation Exemption—Soo Line Railroad Company

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to lease, from Soo Line Railroad Company (Soo Line), and operate 33.44 miles of rail line consisting of: (1) The Lakeville Line between MN&S milepost 35.25 at the I–35 bridge at or near Lakeville and milepost UP 309.69 at or near Northfield, including the Northfield Yard between UP milepost 313.15 (north yard point of switch) and UP milepost 312.13 (south yard point of switch), and a segment of the Cannon Falls Line between milepost 0.0 (equivalent UP milepost 313.67) and milepost 0.1, a distance of 21.74 miles in Dakota County, MN; and (2) the Eagandale Line between UP milepost 332.05 at or near Rosemount and milepost 160.7 at or near Eagan, including the Rosemount siding, team track, house track and wye track between UP milepost 333.15 and UP milepost 333.80, a distance of 11.7 miles in Dakota County, MN.[1]

PGR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and states that such revenues will not exceed $5 million annually. The transaction was scheduled to be consummated on or about May 3, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34496, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, P.C., 208 South LaSalle St., Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–11211 Filed 5–18–04; 8:45 am]

BILLING CODE 4915–01–P

[1] PGR indicates that it has reached an agreement with Soo Line on a lease for PGR's operation of the lines.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 10, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 18, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0137.

Form Number: IRS Form 2032.

Type of Review: Extension.

Title: Contract Coverage under Title II of the Social Security Act.

Description: American employers can enter into an agreement to extend social security coverage to U.S. citizens and resident aliens employed abroad by foreign affiliates.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 160.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—2 hr., 9 min.

Learning about the law or the form—35 min.

Preparing and sending the form to the IRS—39 min.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 546 hours.

OMB Number: 1545–0201.

Form Number: IRS Form 5308.

Type of Review: Extension.

Title: Request for Change in Plan/Trust Year.

Description: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 480.

Estimated Burden Hours Respondent/Recordkeeper: 41 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 325 hours.

OMB Number: 1545–0757.

Regulation Project Number: LR–209–76 Final.

Type of Review: Extension.

Title: Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A.

Description: Section 632A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6324A(c).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 34,600.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of Response: Other (non-recurring).

Estimated Total Reporting Burden: 8,650 hours.

OMB Number: 1545–1189.

Form Number: IRS Form 8819.

Type of Review: Extension.

Title: Dollar Election under Section 985.

Description: Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—4 hr., 32 min.

Learning about the law or the form—53 min.

Preparing and sending the form to the IRS—1 hr., 0 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 3,220 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–11330 Filed 5–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 11, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 18, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0685.

Form Number: IRS Form 1363.

Type of Review: Extension.

Title: Export Exemption Certificate.

Description: This form is used by carriers of property by air to justify the tax-free transport of property. It is used by IRS as proof of tax exempt status of each shipment.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—3 hr., 49 min.

Learning about the law or the form—18 min.

Preparing, copying, assembling, and sending the form to the IRS—22 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 450,000 hours.

OMB Number: 1545–0874.

Form Number: IRS Form 8328.

Type of Review: Extension.

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

Description: Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

Respondents: Business or other for-profit, State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 10,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—7 hr., 24 min.

Learning about the law or the form—2 hr., 47 min.

Preparing and sending the form to the IRS—3 hr., 1 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 132,200. hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–11331 Filed 5–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 12, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 18, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1861.

Revenue Procedure Number: Revenue Procedure 2004–19.

Type of Review: Extension.

Title: Probable or Prospective Reserves Safe Harbor.

Description: This revenue procedure requires a taxpayer to file an election statement with the Service if the taxpayer wants to use the safe harbor to estimate the taxpayers' oil and gas properties' probable prospective reserves for purposes of computing cost depletion under section 611 of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 50 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–11332 Filed 5–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 04–12]

Office of Thrift Supervision

[No. 2004–27]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1189]

FEDERAL DEPOSIT INSURANCE CORPORATION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49695; File No. S7–22–04]

Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Office of Thrift Supervision, Treasury (OTS); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Securities and Exchange Commission (SEC).

ACTION: Notice of interagency statement with request for public comment.

SUMMARY: The OCC, OTS, Board, FDIC, and SEC (collectively, the Agencies) are requesting public comment on a proposed interagency statement concerning the complex structured finance activities of financial institutions (national and state banks; bank holding companies; federal and state savings associations; savings and loan holding companies; and SEC-registered broker-dealers and investment advisors) supervised by the Agencies. As recent events have highlighted, a financial institution may assume substantial reputational and legal risk if the institution enters into a complex structured finance transaction with a customer and the customer uses the transaction to circumvent regulatory or financial reporting requirements, evade tax liabilities, or further other illegal or improper behavior. The proposed interagency statement (Statement) describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with complex structured finance transactions. The Statement, among other things, provides that financial institutions should have effective policies and procedures in place to identify those complex structured finance transactions that may involve heightened reputational and legal risk, to ensure that these transactions receive enhanced scrutiny by the institution, and to ensure that the institution does not participate in illegal or inappropriate transactions.

DATES: Comments regarding the Statement should be received on or before June 18, 2004. Comments regarding the information collections contained in the Statement should be received on or before July 19, 2004.

ADDRESSES:

OCC: You may submit comments, identified by Docket number 04–12 by any of the following methods:

E-mail address: http://www.regs.comments@occ.treas.gov.

Fax: (202) 874–4448.

Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Public Reference Room, Mail Stop 1–5, Washington, DC 20219.

Hand Delivery/Courier: 250 E Street, SW., Attn: Public Reference Room, MailStop 1–5, Washington, DC 20219. You may review the comments received by the OCC and other related materials by any of the following methods:

Viewing Comments Personally: You may personally inspect and photocopy comments received at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

Viewing Comments Electronically: You may request copies of comments received for a particular docket via e-mail or CD-ROM by contacting the OCC's Public Reference Room at *http://www.foia-pa@occ.treas.gov.*

OTS: You may submit comments, identified by No. 2004–27, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@ots.treas.gov.* Please include No. 2004–27 in the subject line of the message, and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–27.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–27.

Instructions: All submissions received must include the agency name and document number. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Board: You may submit comments, identified by Docket No. OP–1189, by any of the following methods:

- Board's Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http//www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

Fax: (202) 452–3819 or (202) 452–3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street

Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

SEC: Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/policy*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–22–04 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–22–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/policy*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

OCC: Kathryn E. Dick, Deputy Comptroller, (202) 874–4660, Risk Evaluation, Grace E. Dailey, Deputy Comptroller, (202) 874–4610, Large Bank Supervision, Ellen Broadman, Director, (202) 874–5210, Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: John C. Price, Jr., Director, Supervision Policy, Examinations and Supervision Policy, (202) 906–5745; Debbie Merkle, Project Manager, Credit Risk, Supervision Policy, (202) 906–5688; David A. Permut, Senior Attorney, Business Transactions Division, (202) 906–7505, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Board: Michael G. Martinson, Senior Adviser (202–452–3640), Walt H. Miles, Assistant Director (202) 452–5264, or Sabeth I. Siddique, Manager (202) 452–3861, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Managing Senior Counsel (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263–4869.

FDIC: William A. Stark, Associate Director, Capital Markets Branch, (202) 898–6972, Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898–3548, Division of Supervision and Consumer Protection; or Mark G. Flanigan, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–7426, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SEC: Mary Ann Gadziala, Associate Director, or Juanita Bishop, Supervisory Accountant at (202) 942–7400, Office of Compliance Inspections and Examinations, or Catherine McGuire, Chief Counsel, Linda Stamp Sundberg, Attorney Fellow, or Randall W. Roy, Special Counsel, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Financial markets have grown rapidly over the past decade and innovations in financial instruments have facilitated the structuring of cash flows and the allocation of risk among borrowers and investors in more efficient ways. This innovation has led to the development of a wide array of structured finance products, including financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, and specialized financial conduits that manage pools of purchased assets.

National and state banks, bank holding companies, and SEC-registered broker-dealers and investment advisers have played an active and important role in the development of structured finance products and markets. In this regard, financial institutions often play an important role in structuring, arranging or participating in complex structured finance transactions for their own use and to facilitate the needs of customers.

As financial intermediaries, financial institutions play a critical role in ensuring the integrity of financial markets and maintaining the trust and public confidence essential to the proper functioning of the capital markets. In the vast majority of cases, structured finance products and the role played by financial institutions with respect to these products have served the legitimate business purposes of customers. This has allowed structured finance products to become an essential part of U.S. and international capital markets.

The more complex variations of structured finance products, however, have placed pressure on the interpretations of accounting and tax rules, and, in turn, have given rise to significant concerns about the legality and appropriateness of certain individual transactions. Importantly, a limited number of complex structured finance transactions appear to have been used to alter the appearance of a customer's public financial statements in ways that are not consistent with the economic reality of the transactions or to inappropriately reduce a customer's tax liabilities. In the most extreme cases, structured finance transactions appear to have been used in fraudulent schemes to misrepresent the financial condition of public companies or evade taxes.

Financial institutions must conduct their operations in compliance with applicable law and regulations, and institutions that do not may be subject to enforcement actions by the Agencies and lawsuits by private parties. As recent events have highlighted, financial institutions may face substantial legal risk to the extent they participate in complex structured finance transactions that are used by customers to circumvent regulatory or financial reporting requirements, evade tax liabilities, or further other illegal or improper behavior by the customer. Involvement in such transactions also may damage an institution's reputation and franchise value. Reputational risk poses a major threat to financial institutions because the nature of their business requires maintaining the confidence of customers, creditors, and the general marketplace. Importantly, reputational risks may arise even where the transactions involved are structured to technically comply with existing laws and regulations.

The events associated with Enron Corp. demonstrate the potential for the abusive use of complex structured finance transactions, as well as the substantial legal and reputational risks that financial institutions face when they participate in complex structured finance transactions that are designed or used for improper purposes. After conducting investigations, the OCC, Federal Reserve System, and the SEC took strong and coordinated civil and

administrative enforcement actions against certain financial institutions that participated in complex structured finance transactions with Enron Corp. that appeared to have been designed or used to shield the company's true financial health from the public.[1] These actions involved significant financial penalties on the institutions and required the institutions to take several measures to strengthen their risk management practices for complex structured finance activities. The structured finance relationships between some financial institutions and Enron Corp. also sparked an investigation by the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Governmental Affairs,[2] as well as numerous lawsuits by private litigants.

The Agencies have long expected financial institutions to develop and maintain robust control infrastructures enabling them fully to identify, evaluate and control all dimensions of risk associated with their business activities. In the area of complex structured finance transactions, it is critical that financial institutions have effective risk management and internal controls to ensure that the institutions' activities comply with the law and that all of the risks associated with a transaction—including legal and reputational risks—are identified and appropriately addressed.

In light of recent events, the OCC, Board, and SEC conducted special reviews of several banking and securities firms that are significant participants in the market for complex structured finance products. These reviews were designed to evaluate the product approval, transaction approval, and other internal controls and processes used by these institutions to identify and manage the legal, reputational, and other risks associated with complex structured finance transactions. These assessments indicated that many financial institutions have already taken meaningful steps to improve their control infrastructures relating to complex structured finance products in light of the control weaknesses evidenced by recent events. The Agencies also have focused attention on the complex structured finance activities of financial institutions in the normal course of our supervisory process.

II. Proposed Statement on Sound Practices Concerning the Complex Structured Finance Activities of Financial Institutions

In order to help ensure that financial institutions have and maintain adequate control infrastructures for complex structured finance transactions, the Agencies have developed, and are seeking public comment on, the attached Statement included at the end of this notice.[3] The Statement describes a number of internal controls and risk management procedures that the Agencies believe are particularly useful in assisting financial institutions to ensure that their complex structured financial activities are conducted in accordance with applicable law and that institutions effectively manage the full range of risks associated with these activities, including legal and reputational risks. The Statement reflects the ''lessons learned'' from recent events, as well as what the Agencies believe to be sound practices in this area based on supervisory reviews and experience. Financial institutions should consider the Statement in developing and evaluating the institution's risk controls for complex structured finance activities. The following provides a brief overview of the key aspects of the Statement.

As a general matter, the Statement indicates that financial institutions offering complex structured finance transactions should maintain a comprehensive set of formal, firm-wide policies and procedures that provide for the identification, documentation, evaluation, and control of the full range of credit, market, operational, legal, and reputational risks that may be associated with these transactions. These policies and procedures should be designed to ensure that the financial institution consistently and appropriately manages its complex structured finance activities on both a per transaction and relationship basis, with all customers (including corporate entities, government entities, and individuals) and in all jurisdictions where the financial institution operates.

The board of directors of a financial institution has ultimate responsibility for establishing the institution's risk tolerances for complex structured finance transactions and ensuring that a sufficiently strong risk control framework is in place to guide the actions of the financial institution's personnel. The board of directors and senior management also should send a strong message to others in the financial institution about the importance of integrity, compliance with the law, and overall good business ethics, which may be implemented through a Code of Professional Conduct.

- As described further in the Statement, an institution's policies and procedures should define what constitutes a complex structured finance transaction and should, among other things—
- Define the process that financial institution personnel must follow to obtain approval for complex structured finance transactions;
- Establish a control process for the approval of all new complex structured finance products;
- Ensure that the reputational and legal risks associated with a complex structured finance transaction, or series of transactions, are identified and evaluated in both the transaction and new product approval process and appropriately managed by the institution;
- Ensure that financial institution staff appropriately reviews and documents the customers' proposed accounting treatment of complex structured finance transactions, financial disclosures relating to the transactions, and business objectives for entering into the transactions;
- Provide for the generation, collection and retention of appropriate documentation relating to all complex structured finance transactions;
- Ensure that senior management and the board of directors of the institution receive appropriate and timely reports concerning the institution s complex structured finance activities;
- Provide for periodic independent reviews of the institution's complex structured finance activities to ensure that the institution's policies and controls are being implemented effectively and to identify potential compliance issues;

[1] *See* Exchange Act Release No. 48230 (July 28, 2003), Written Agreement by and between Citibank, N.A. and the Office of the Comptroller of the Currency, No. 2003–77 (July 28, 2003) (pertaining to transactions entered into by Citibank, N.A. with Enron Corp.), and Written Agreement by and between Citigroup, Inc. and the Federal Reserve Bank of New York, dated July 28, 2003 (pertaining to transactions involving Citigroup Inc. and its subsidiaries and Enron Corp. and Dynegy Inc.); SEC Litigation Release No. 18252 (July 28, 2003) and Written Agreement by and among J.P. Morgan Chase & Co., the Federal Reserve Bank of New York, and the New York State Banking Department, dated July 28, 2003 (pertaining to transactions involving J.P. Morgan Chase & Co. and its subsidiaries and Enron Corp.).

[2] *See Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by U.S. Financial Institutions,* Report Prepared by the Permanent Subcomm. on Investigations, Comm. on Governmental Affairs, United States Senate, S. Rpt. 107–82 (2003).

[3] For institutions supervised by the Board, the OCC, the OTS, and the FDIC the statement will represent supervisory guidance. For institutions registered with the SEC, the statement will represent a policy statement.

• Ensure effective internal audit coverage of the institution's complex structured finance activities; and

• Ensure that financial institution personnel receive appropriate training concerning the institution's policies and procedures governing its complex structured finance activities.

An institution should establish a clear process for identifying those complex structured finance transactions that involve heightened legal and reputational risks. Once a transaction is identified as involving potentially heightened legal or reputational risk, the institution should ensure that these transactions receive an elevated and thorough review. If, after conducting this review, the financial institution determines that a proposed transaction may result in the customer filing materially misleading financial statements, the financial institution should decline to participate in the transaction, condition its participation upon the customer making express and accurate disclosures regarding the nature and financial impact of the transaction on the customer's financial condition, or take other steps to ensure that the financial institution does not participate in an inappropriate transaction.

The Statement includes examples of characteristics that may indicate that a transaction or series of transactions involves elevated levels of legal or reputational risk and, thus, should be subject to heightened review by the institution. The examples included in the Statement are not exclusive and institutions may differ in the sets of characteristics they use in identifying transactions that may involve heightened risks. Institutions, however, should be conservative when establishing these characteristics and the ultimate goals of all institutions should remain the same—to identify those transactions that require additional scrutiny at inception and to ensure that transactions receive a level of review that is commensurate with the legal and reputational risks associated with the transaction.

Because the Statement discusses sound practices related to complex structured finance activities—activities that typically are conducted only by larger financial institutions—the Statement would not be relevant and, therefore, would not apply to most small institutions. Moreover, an institution's policies and procedures concerning complex structured finance activities should be tailored to, and appropriate in light of, the institution's size and the nature, scope, and risk of its complex structured finance activities.

The Agencies request comment on all aspects of the Statement and will revise the Statement as appropriate after a review of public comments.

III. Paperwork Reduction Act

The Board, the FDIC, the OTS, and the OCC have determined that the Statement, which will represent supervisory guidance for institutions supervised by the Board, the FDIC, the OTS, and the OCC, contains collections of information for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35). The OCC, the FDIC, the OTS, and Board request public comment on all aspects of the collections of information contained in the Statement. Also, the OCC, FDIC, OTS, and Board request comment on whether institutions involved in complex structured finance transactions currently are in compliance with the Statement and the information collections therein.

The OCC, FDIC, OTS, and Board also invite comment on:

(1) Whether the collections of information contained in the Statement are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Respondents/record keepers are not required to respond to these collections of information unless the Board, the FDIC, the OTS, and OCC display a currently valid Office of Management and Budget (OMB) control number. The OCC, FDIC, and OTS currently are requesting approval of these information collections from OMB, and the Board is processing this collection under its delegated authority.

The OCC, FDIC, OTS, and Board estimates of the total annual burden of the collections of information contained in the Statement on the financial institutions they supervise follow.

OCC: The collection of information requirements contained in the Statement will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35). The OCC will use any comments received to evaluate the collections and verify its burden estimates. The OCC believes that only the largest national banks and U.S. branches of foreign banks are involved in these activities. Further, as a matter of usual and customary business practice and in light of recent events, involved institutions already have installed policies and procedures similar to those envisioned in the Statement. However, institutions will have to verify and update their policies and procedures periodically to ensure that they are adequate and current.

Comments on the collections of information should be sent to John Ference or Camille Dixon, Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 8–4, Attention: Docket Number 04–12 (1557–CSFA), Washington, DC 20219. You may also send comments by electronic mail to *camille.dixon@occ.treas.gov.* You should also send a copy of your comments to OMB Desk Officer, Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1557–CSFA), Washington, DC 20503. Alternatively, you may e-mail your comments to *mmenchik@omb.eop.gov,* or fax them to (202) 395–6974.

The potential respondents are the largest national banks and U.S. branches of foreign banks.

Estimated number of respondents: 21.

Estimated average annual burden hours per respondent: 100 hours.

Estimated total annual burden: 2,100 burden hours.

FDIC: The collection of information requirements contained in the Statement will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35). The FDIC will use any comments received to evaluate the collections and verify its burden estimates. The FDIC believes that only the largest state nonmember banks are involved in these activities. Further, as a matter of usual and customary business practice and in light of recent events, involved institutions already have installed policies and procedures similar to those envisioned in the Statement. However, institutions will have to verify and update their policies and procedures periodically to ensure that they are adequate and current.

Comments on the collections of information should be sent to Thomas Nixon, Legal Division, Federal Deposit

Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments should also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Alternatively, you may e-mail your comments to *mmenchik@omb.eop.gov,* or fax them to (202) 395–6974.

The potential respondents are the largest state nonmember banks.

Estimated number of respondents: 5.

Estimated average annual burden hours per respondent: 100 hours.

Estimated total annual burden: 500 burden hours.

OTS: The collection of information requirements contained in the Statement will be submitted to OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35). OTS will use any comments received to evaluate the collections and verify its burden estimates. The OTS assumes that only the largest savings associations and savings and loan holding companies could be involved in these activities. Further, as a matter of usual and customary business practice and in light of recent events, involved institutions already have installed policies and procedures similar to those envisioned in the Statement. However, institutions will have to verify and update their policies and procedures periodically to ensure that they are adequate and current.

Send comments, referring to the collection by title of the proposal, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. You should also send a copy of your comments to OMB Desk Officer, Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1550–NEW), Washington, DC 20503. Alternatively, you may e-mail your comments to *mmenchik@omb.eop.gov,* or fax them to (202) 395–6974.

The potential respondents are the largest savings associations and savings and loan holding companies.

Estimated number of respondents: 5.

Estimated average annual burden hours per respondent: 100 hours.

Estimated total annual burden: 500 burden hours.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320, appendix A.1), the Board reviewed the Statement under the authority delegated to the Board by the OMB. The Board believes that only the largest state member banks, bank holding companies, and U.S. branches and agencies of foreign banks are involved in complex structured finance activities. Further, as a matter of usual and customary business practice and in light of recent events, involved institutions already have adopted policies and procedures similar to those envisioned in the Statement. However, the institutions will have to verify and update their policies and procedures periodically to ensure that they are adequate and current.

Comments on the collections of information should be sent to Michelle Long, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551. You should also send a copy of your comments to OMB Desk Officer, Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1557—To Be Determined), Washington, DC 20503. Alternatively, you may e-mail your comments to *mmenchik@omb.eop.gov,* or fax them to (202) 395–6974.

The potential respondents are the largest state member banks, bank holding companies, and U. S. branches and agencies of foreign banks.

Estimated number of respondents: 20.

Estimated average annual burden hours per respondent: 100 hours.

Estimated total annual burden: 2,000 hours.

The proposed Statement follows.

Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities

I. Introduction

Financial markets have grown rapidly over the past decade and innovations in financial instruments have facilitated the structuring of cash flows and allocation of risk among creditors, borrowers and investors in more efficient ways. Financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, specialized financial conduits that manage pools of purchased assets, along with other structured transactions have usually served the legitimate business purposes of the customers of financial institutions and are an essential part of U.S. and international capital markets.

Financial institutions have played an active and important role in the development of structured finance products and markets. Structured finance transactions are often employed to manage risk or for other legitimate business purposes, such as diversifying risks, allocating cash flows, and reducing cost of capital. The more complex variations of selected structured finance transactions have, however, placed pressure on the interpretations of accounting and tax rules, and this has given rise to significant concerns about the risks associated with certain individual transactions. More so, a limited number of transactions appear to have been used primarily to alter the appearance of a customer's public financial statements in ways that are not consistent with the economic reality of the transactions or to inappropriately reduce a customer's tax liabilities. In the most extreme cases, structured finance transactions appear to have been used in fraudulent schemes primarily to misrepresent the financial condition of public companies or evade taxes. Some financial institutions have been subject to criminal sanctions, and civil and administrative enforcement actions by the regulatory agencies, for participating in complex structured finance transactions used by a public company in reporting false or misleading financial statements.

Financial institutions are in a unique position given their role in structuring, arranging or participating in complex structured finance transactions for their own use and to facilitate the needs of their customers. When a financial institution provides advice on, arranges or actively participates in a complex structured finance transaction, it assumes the usual market, credit, and operational risks and also may assume substantial reputational and legal risk to the extent that an end-user enters into the transaction for improper purposes. Considering the inherent complexity of many structured finance transactions and the many risks associated with these transactions, it is critical that

financial institutions have effective risk management and internal controls relating to these products to ensure compliance with the law and to effectively monitor and control the risks associated with these transactions. Financial institutions may not engage in complex structured finance transactions in violation of the law and institutions that violate the law may be subject to enforcement action and civil or criminal penalties.

The regulatory agencies have long expected financial institutions to develop and maintain robust control infrastructures enabling them to fully identify, evaluate and control all dimensions of risk associated with their business activities. In the wake of recent developments, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the U.S. Securities and Exchange Commission are issuing this guidance to financial institutions that we supervise (''financial institutions'' or ''institutions'')[1] to describe a number of internal controls and risk management procedures that we believe are useful to effectively manage the risks associated with complex structured finance transactions.

Because many of the core elements of an effective control infrastructure are the same regardless of the business line involved, this guidance draws heavily on controls and procedures that our agencies previously have found to be effective in managing and controlling risks and identifies ways in which these controls and procedures can effectively be applied to the institution's complex structured finance activities. Financial institutions should consider this guidance in developing, or evaluating existing, risk controls for complex structured finance activities. These risk controls should supplement the financial institution's more general internal controls and risk management systems, as appropriate.

[1] These institutions are national banks in the case of the Office of the Comptroller of the Currency; federal and state savings associations and savings and loan holding companies in the case of the Office of Thrift Supervision; state member banks and bank holding companies in the case of the Federal Reserve Board; state nonmember banks in the case of the Federal Deposit Insurance Corporation; and registered broker-dealers and investment advisers in the case of the Securities and Exchange Commission. The U.S. branches and agencies of foreign banks supervised by the Federal Reserve Board, the Office of the Comptroller, and the Federal Deposit Insurance Corporation also are considered to be financial institutions for purposes of this guidance.

II. Definition and Key Risks of Complex Structured Finance Transactions

Structured finance transactions encompass a broad array of products with varying levels of complexity. This guidance addresses complex structured finance transactions, which usually share several common characteristics. First, they typically result in a final product that is often non-standard and structured to meet the specific financial objectives of a customer. Second, they often involve professionals from multiple disciplines within the financial institution and may have significant fees or high returns in relation to the market and credit risks associated with the transaction. Third, they may be associated with the creation or use of one or more special purpose entities (SPEs) designed to address the economic, legal, tax or accounting objectives of the customer and/or the combination of cash and derivative products. Finally, and perhaps most importantly, they may expose the financial institution to elevated levels of market, credit, operational, legal or reputational risks. These criteria are not exclusive and institutions should supplement or modify these criteria as appropriate to reflect the institution's business activities and changes in the marketplace.

Financial risks include, among other things, market and credit risks. Due to their inherent complexity, financial institutions participating in complex structured finance transactions also may face heightened reputational or legal risk. Financial institutions have been sued due to their involvement in complex structured finance transactions that allegedly facilitated the deceptive accounting or financial reporting practices of certain public companies. Legal risk also may arise in other situations if the financial institution is involved in transactions that are used by customers to circumvent regulatory or financial reporting requirements, evade tax liabilities, or further other illegal or improper behavior by the customer. [2] Besides creating legal risks, these transactions may create substantial reputational risk for the institution. Reputational risk poses a major threat to financial institutions because the nature of their business requires maintaining the confidence of customers, creditors and the general marketplace. Importantly, reputational risks may arise even where the transactions involved are structured to technically comply with existing laws and regulations and accounting standards.

Accordingly, financial institutions need to have strong controls to ensure that their actions with respect to complex structured finance transactions—including structuring, marketing, sales, funding and trading activities—are conducted in accordance with applicable laws and regulations, and to ensure that the institution identifies and appropriately addresses the potential reputational risks involved in these transactions. As discussed further under ''Reputational and Legal Risk,'' an institution's policies and procedures should identify those complex structured finance transactions that may warrant enhanced scrutiny due to factors related specifically to reputational and legal risk.

Although the foregoing (and this document more generally) highlights some of the most significant risks associated with complex structured finance transactions, it is not intended to present a full exposition of the risks associated with these transactions. Financial institutions are encouraged to refer to other supervisory information prepared by the agencies for further information concerning market, credit, operational, legal and reputational risks.

III. Guidelines for Incorporating Structured Finance Transactions Into Existing Management Procedures, Controls and Systems

Role of Board and Management

The board of directors (the Board) of a financial institution is elected by and accountable to shareholders, and is the focal point of the corporate governance system. Effective oversight by the boards of directors of public institutions is fundamental to preserving the integrity of capital markets. The board of directors, in its oversight role, is ultimately responsible for the financial well being of the institutions they oversee, as well as ensuring that the risks associated with the firm's business activities, including those activities associated with the offering and delivery of complex structured finance transactions, are appropriately identified, evaluated and controlled by management. The Board should establish the financial institution's threshold for the risks associated with complex structured finance products and ensure that a sufficiently strong risk

[2] For additional guidance concerning when a financial institution's participation in a complex structured finance transaction may violate the Federal securities laws, and the bases for such potential liability, see Letter from Annette L. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, to Richard Spillenkothen and Douglas W. Roeder, dated December 4, 2003 (available at *http://www.federalreserve.gov/boarddocs/srletters/2004/* and *http://www.occ.treas.gov*).

control framework is in place to guide the actions of the financial institution's personnel. The Board should ensure that the financial institution has a risk control framework for complex structured finance transactions that includes comprehensive policies that address the elements described below.

Using guidance provided by the Board, senior management should implement a risk control framework for complex structured finance transactions that includes comprehensive policies, defined roles and responsibilities and approval authorities, detailed management reporting, required documentation, and ongoing independent monitoring and testing of policy compliance. In order to manage the risks associated with complex structured finance transactions, some institutions have established a senior management committee that is designed to ensure that all of the relevant control functions within the financial institution, including independent risk management, accounting policy, legal, and financial control, are involved in the oversight of complex structured finance transactions. The goal of such a senior-level risk control committee is to ensure that those complex structured finance activities that may expose the financial institution to higher levels of financial, legal and reputational risk are comprehensively and consistently managed and controlled on a company-wide basis. This senior management committee regularly reviews trends in new products and complex structured transaction activity, including overall risk exposures from such transactions, and typically provides final approval of the most complicated or controversial complex structured finance transactions. The agencies believe that such a senior-level committee can serve as an important part of an effective control infrastructure for complex structured finance activities.[3]

The Board and senior management also should send a strong message to others in the financial institution about the importance of integrity, compliance with the law, and overall good business ethics, which may be implemented through a Code of Professional Conduct. The Board and senior management should strive to create a firm-wide corporate culture that is sensitive to ethical issues as well as the potential risks to the financial institution. The financial institution's culture and procedures should encourage personnel to elevate ethical concerns regarding a complex structured finance transaction or series of transactions to appropriate levels of management. Establishing a culture that encourages financial institution personnel to elevate concerns to appropriate levels of management may require mechanisms to protect personnel by permitting confidential disclosure in appropriate circumstances.[4] Additionally, the Board and senior management should ensure that incentive plans are not structured in a way that encourages transactors to cross ethical boundaries when executing complex structured finance transactions.

Policies and Procedures

Financial institutions offering complex structured finance transactions should maintain a comprehensive set of formal, firm-wide policies and procedures that provide for the identification, documentation, evaluation, and control of the full range of credit, market, operational, legal, and reputational risks that may be associated with these transactions. These policies should start with the financial institution's definition of what constitutes a complex structured finance transaction and be designed to ensure that the financial institution appropriately manages its complex structured finance activities on both an individual transaction and a relationship basis, with all customers (including corporate entities, government entities and individuals) and in all jurisdictions where the financial institution operates.[5] These policies may be developed specifically for complex structured finance transactions or included in the set of broader policies governing the institution generally.

To be most effective, the institution's policies and procedures relating to complex structured finance transactions should specifically set forth the particular responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of these transactions. Accordingly, these policies and procedures should address responsibilities of personnel from sales and trading, relationship management, market risk, credit risk, operations, accounting, legal, compliance, audit and senior line management. The financial institution's policies and procedures should provide a clear framework for the approval and monitoring of complex structured finance transactions. Policies for relevant personnel should describe responsibilities for working with relationship managers, advising and counseling customers, disclosing information to customers, and providing relevant information to control areas.

The institution's policies should ensure that the market, credit, and operational risk associated with individual complex structured transactions are appropriately identified, aggregated, and managed. A financial institution should, at a minimum, also have procedures, controls and systems for complex structured finance activities that address the following: (1) Transaction approval, (2) new product approval, (3) reputational and legal risk, (4) accounting and disclosure by the customer, (5) documentation, (6) reporting, (7) independent monitoring, analysis and compliance with internal policies, (8) audit, and (9) training.

Transaction Approval

The policies and procedures of a financial institution should define the process that personnel must follow to obtain approval for a complex structured finance transaction. Policies for approving complex structured finance transactions should clearly articulate the roles and responsibilities of both transactors (*e.g.* personnel from origination, structuring, execution, sales and trading areas) and independent control staff (*e.g.* personnel from risk management, accounting policy, legal, and financial control) in analyzing, approving, and documenting proposed transactions. Policies should guide front office personnel in meeting their responsibilities to provide information on customer objectives and key risk issues (including those described below) to the appropriate approving personnel. Furthermore, it is imperative that the approving authority includes representatives from appropriate control areas that are independent of the transactors. Approving personnel should have appropriate experience and stature in the financial institution to ensure proper consideration of elements or factors that may expose the institution to higher levels of credit, market, operational, legal or

[3] Financial institutions should ensure that the control processes established for complex structured finance activities comply with any informational barriers established by the institution to manage potential conflicts of interest, insider trading or other concerns.

[4] The agencies note that the Sarbanes-Oxley Act of 2002 requires companies listed on a national securities exchange or inter-dealer quotation system of a national securities association to establish procedures that enable employees to submit concerns regarding questionable accounting or auditing matters on a confidential, anonymous basis. *See* 15 U.S.C. 78j–1(m).

[5] In the case of U.S. branches and agencies of foreign banks, these policies should be coordinated with the group-wide policies developed in accordance with the rules of the foreign bank's home supervisor.

reputational risk. While acknowledging its ultimate responsibility for the approval of complex structured finance transactions, the organization's policies also should clearly outline when third-party legal professionals should be engaged to review and opine on transactions, and when third-party accounting or tax professionals should be engaged to consult on transactions.

New Product Policies

Complex structured finance transactions also should be incorporated into a financial institution's new product policies. In this regard, a financial institution's policies should include a definition of what constitutes a ''new'' complex structured finance product and should establish a control process for the approval of each new product. In determining whether or not a complex structured finance transaction is ''new,'' a financial institution should consider a variety of factors, including any structural variations from existing products, whether the product is targeted at a new class of customers, pricing variations from existing products, whether the product raises additional or new legal, compliance or regulatory issues, and deviations from standard market practices. When in doubt as to whether a complex structured finance transaction requires vetting through the new product approval process, financial institution personnel should err on the side of conservatism and route the proposed product through the process dictated in the new product approval policy. The new product policies for complex structured finance activities should address the roles and responsibilities of all relevant parties, including the front office, credit risk, market risk, operations, accounting, legal, compliance, audit and senior line management. In addition, it is imperative that the institution's policies require that new products receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.

A financial institution also should have in place controls that are designed to ensure that new complex structured finance products are, in fact, subjected to the institution's established approval process. Moreover, subsequent to the new product approval, the financial institution should monitor new complex structured finance products to ensure that they are effectively incorporated into the institution's risk control systems.

Reputational and Legal Risk

The policies and procedures established by a financial institution for complex structured finance activities should ensure that the legal and reputational risks associated with a transaction, or series of transactions, are identified and evaluated in both the transaction and new product approval processes and effectively and appropriately managed by the institution. A financial institution should have effective policies, procedures and controls for assessing the customer's business objectives for entering into a transaction or series of transactions and the economic substance of the transaction(s), evaluating the appropriateness of the transaction(s), and preventing the financial institution from participating in inappropriate transactions.

Policies should ensure that the customer understands the risk and return profile of the transaction. In instances where the financial institution is designing the transaction and advising the customer, the disclosures to the customer should include an adequate description of the risks in the complex structured finance transaction as well as disclosure of any conflicts of interest associated with the financial institution's participation in the transaction. Policies should also articulate when a proposed transaction requires acknowledgement by the customer that the transaction has been reviewed and approved by higher levels of the customer's management. Notwithstanding a customer's sophistication and structure of a complex structured finance transaction, the financial institution should evaluate the impact a transaction may have on the financial institution's reputation or franchise value.

Policies should outline responsibilities of the sales force, front office, credit and other risk control personnel for analyzing and documenting the customer's objectives and customer-related accounting, regulatory, or tax issues. In addition, a financial institution's policies and procedures should establish criteria or factors for when concerns related to a particular structured finance transaction will necessitate a comprehensive evaluation of the institution's entire relationship with a customer.

Policies should ensure that complex structured finance transactions are reviewed on a consistent basis by the financial institution's legal department and, where appropriate, by independent outside counsel. In general, the financial institution's legal department should review complex structured finance transactions as part of the approval process. Legal personnel may be assigned to business units or areas where complex structured transactions originate to ensure the legal department's involvement throughout the transaction's development, or financial institutions may assign specific legal personnel to each complex structured finance transaction. Independent monitoring by a risk control group or compliance unit should ensure that all complex structured transactions receive appropriate legal review, including review by outside counsel where appropriate.

Areas for legal review include financial institution permissibility, disclosure by the customer, regulatory capital requirements, the enforceability of any netting and collateral agreements associated with the transaction, suitability or appropriateness assessments, customer assurances, insurance considerations and tax issues. Because transactions may involve multiple counterparties located in different jurisdictions, the financial institution should establish review and documentation procedures that are designed to ensure that each counterparty has the authority to enter into the transaction and that each counterparty's obligations are reduced to legally enforceable contracts. Financial institutions should ensure that any legal reviews are conducted by qualified in-house or outside counsel and that these professionals are provided the documentation and other information needed to properly evaluate the transaction.

Careful evaluations of the consequences of a transaction are particularly important when the transaction is designed to achieve a customer's financial reporting or complex tax objectives. Policies should clearly define the types of circumstances where the approval of transactions or patterns of transactions should be elevated to higher levels of financial institution management for reasons specific to legal or reputational risk. In creating procedures for elevating certain transactions to higher levels, financial institutions should identify the characteristics of those transactions, or series of transactions, that increase reputational and legal risk. Institutions should be conservative when identifying these characteristics. While institutions may differ in the sets of characteristics they identify, the goals should remain the same—to identify the transactions that require additional scrutiny at inception and to ensure that transactions receive a level of review

that is commensurate with the legal and reputational risks associated with the transaction. Examples of characteristics that should be considered in determining whether or not a transaction or series of transactions might need additional scrutiny include:

- Transactions with questionable economic substance or business purpose or designed primarily to exploit accounting, regulatory or tax guidelines), (particularly when executed at year end or at the end of a reporting period);
- Transactions that require an equity capital commitment from the financial institution;
- Transactions with terms inconsistent with market norms (*e.g.,* deep ''in the money'' options, non-standard settlement dates, non-standard forward-rate rolls);
- Transactions using non-standard legal agreements (*e.g.,* customer insists on using its own documents that deviate from market norms);
- Transactions involving multiple obligors or otherwise lacking transparency (*e.g.,* use of SPEs or limited partnerships);
- Transactions with unusual profits or losses or transactions that give rise to compensation that appears disproportionate to the services provided or to the risk assumed by the institution;
- Transactions that raise concerns about how the client will report or disclose the transaction (*e.g.,* derivatives with a funding component, restructuring trades with mark to market losses);
- Transactions with unusually short time horizons or potentially circular transfers of risk (either between the financial institution and customer or between the customer and other related parties);
- Transactions with oral or undocumented agreements, which, if documented, could have material legal, reputational, financial accounting, financial disclosure, or tax implications; [6]
- Transactions that cross multiple geographic or regulatory jurisdictions, making processing and oversight difficult;
- Transactions that cannot be processed via established operations systems; and
- Transactions with significant leverage.

Having developed a process to identify transactions that may pose higher levels of legal and reputational risk, financial institutions should implement procedures to address these risks. These procedures should, among other things:

- Ensure that staff approving each transaction fully understands the scope of the institution's relationship with the customer and has evaluated and documented the customer's business objectives for entering into the transaction, the economic substance of the transaction, and the potential legal and reputational risks to the financial institution;
- Ensure a thorough review and evaluation of whether credit exceptions, accounting issues, rating agency disclosures, law suits against the customer, or other factors expose the financial institution to unwarranted legal or reputational risks;
- Develop and implement effective internal communication procedures to ensure that all financial institution personnel responsible for transaction approval and monitoring receive, and document in a timely manner, complete and accurate information about the transaction, the customer's purpose(s) for entering into the particular transaction, and the materiality of the transaction to the customer;
- Ensure sufficient time is allowed for a detailed, thorough review of the transaction by the relevant personnel;
- Ensure that complex structured finance transactions identified as having heightened risks receive a thorough review by senior management for an evaluation of credit, market, operation, legal and reputational risks to the financial institution;
- Ensure that complex structured finance transactions that are determined to present unacceptable risk to the financial institution are declined;
- Ensure that the Board and senior management periodically assess the financial institution's tolerance for risks associated with complex structured finance transactions; and
- Ensure that the institution provides the customer with appropriate information concerning the structure and risks of the transaction, and articulate when a proposed transaction requires acknowledgement of review by higher levels of a customer's management.

Accounting and Disclosure by Customers

As noted above, transactions designed primarily to achieve financial reporting or complex tax objectives may require greater scrutiny due to possible legal and reputational risk implications. For transactions identified as involving elevated risks, the financial institution's procedures should ensure that staff approving the transactions obtain and document complete and accurate information about the customer's proposed accounting treatment of the transaction, financial disclosures relating to the transaction, as well as the customer's objectives for entering into the transaction. The institution's policies should ensure that this information is assessed by appropriate personnel in the approval process and that these personnel consider the information in light of financial, accounting, rating agency disclosure, or other information associated with the transaction that may raise legal or reputational risks for the financial institution.

The financial institution's policies also should address when third party accounting professionals should be engaged to review transactions. Moreover, there may be circumstances where the financial institution or the third-party accounting professionals it engages will wish to communicate directly with the customer's independent auditors to discuss the transaction. Independent monitoring of the approval process (discussed below) should ensure that personnel adhere to established requirements for obtaining a review by third party accountants or communicating with the customer's independent auditor.

In any instance where the financial institution determines that a proposed transaction may result in the customer filing materially misleading financial statements, the financial institution should take appropriate actions. Such actions may include declining to participate in the transaction or conditioning its participation upon the customer making express and accurate disclosures regarding the nature and financial impact of the transaction on the customer's financial condition. The ultimate objective is to take steps to ensure that the financial institution does not participate in an inappropriate transaction. As part of this process, financial institutions should consider seeking representations and warranties from the customer stating the purpose of the transaction, how the customer will account for the transaction, and that the customer will account for the transaction in accordance with applicable accounting standards, consistently applied.[7]

[6] This item is not intended to include traditional, non-binding ''comfort'' letters provided to financial institutions in the loan process where, for example, the parent of a loan customer states that the customer (*i.e.,* the parent subsidiary) is an integral and important part of the parent's operations.

[7] Of course, financial institutions also should ensure that the institution's own accounting for

The financial institution also should develop procedures to address the creation, acquisition, and use of institution and client-sponsored SPEs. When a structured transaction requires the establishment of such an entity, the financial institution should implement an SPE approval process that permits the risk control groups to evaluate the accounting, legal, and tax issues. Effective review may protect the financial institution against accounting, legal, tax, and reputational risks. Financial institutions should also monitor the use of SPEs by providing periodic updates to executive management and maintaining a database of all SPEs created to facilitate structured finance transactions.

Documentation Standards

The documentation that financial institutions use to support complex structured finance transactions is often highly customized and negotiated. Careful generation, collection and retention of documents associated with complex structured finance transactions are important control mechanisms in minimizing legal and credit risks, as well as reducing unwarranted exposures to the financial institution's reputation. Policies and procedures should ensure that transaction documentation is appropriately detailed and transparent for review by all control or approval functions. When in doubt, financial institutions should err on the side of conservatism and retain documents associated with transaction due diligence, approval and monitoring. Financial institutions should maintain comprehensive documentation for all transactions approved, as well as disapproved transactions with controversial elements (*e.g.,* denied in the final stages of approval or due to customer requests for particular terms requiring additional scrutiny).

The documentation policies of a financial institution should seek to ensure that all counterparty obligations are reduced to legally enforceable written contracts. This would include the use of term sheets, confirmations, master agreements, netting agreements, and collateral agreements or comparable documents. An institution should have systems in place to track the status of documentation on a deal-by-deal basis to ensure that counterparties execute and return all necessary contractual documents. The responsibility for drafting transaction documents, or selecting appropriate templates, should be assigned to personnel who can identify legal issues (*e.g.,* enforcing collateral or netting agreements in foreign jurisdictions), and have been given guidance on when to escalate issues involving the drafting process to higher level legal staff or management. Financial institutions that engage in a significant number of complex structured finance transactions may find it beneficial to establish a specialized documentation unit.

The financial institution's documentation standards also should clearly assign accountability and strive for transparency in the approval process and ongoing monitoring of exposures associated with complex structured finance transactions. Such standards should include appropriate guidance on: [8]

• Generation, distribution and retention of documents associated with individual transactions. In addition to standard legal documents, such documentation should include, as appropriate:

—Deal summary, including a list of deal terms
—Analysis or opinions (both formal and informal), prepared internally or by third parties, regarding legal considerations, tax and accounting treatments, market viability and regulatory capital requirements for any and all parties
—Marketing materials and other key documents provided to the customer
—Internal and external correspondence, including electronic communications, regarding transaction development and due diligence
—Transaction and credit approvals (including any documentation of actions taken to mitigate initial concerns, such as providing additional client disclosures or changing deal structures)
—Minutes of critical meetings with the client
—Disclosures provided to the customer (including side letters or other documents addressing terms or conditions of the transactions), including disclosures of all conflicts of interest and descriptions of the terms of the complex structured finance transactions
—Acknowledgements received from the customer concerning the accounting, tax, or regulatory implications associated with the transaction

• Generation, distribution and retention of documents such as minutes of meetings of committees and control groups prepared in sufficient detail to indicate issues raised, approval or rejection of a transaction, rationale or factors considered in approving or rejecting a transaction and contingencies or items to be resolved pending final approval. It may be practical to assign a specific coordinator or central location for the maintenance of committee and control group minutes.

• Generation, distribution and retention of information demonstrating final resolution of items still pending at time of transaction approval.

• Generation, distribution and retention of key documents associated with ongoing communications with the customer.

• Generation, distribution and retention of key documents showing the financial institution's monitoring of exposures and periodic assessment of reputational and legal risk considerations.

Reporting

Regardless of the approval structure, the financial institution should define the complex structured finance transaction reporting requirements appropriate for various levels of management and the Board. Financial institutions should develop and ensure that reports summarizing pending and contemplated complex structured finance transactions are disseminated to appropriate levels of management for their review and further distribution. At a minimum, the financial institution should establish an independent risk function that prepares a periodic summary of trends in complex structured finance transactions and a brief summary of each deal determined to involve heightened risks. In addition, management should establish a process for reporting transactions viewed as possessing higher risk.

Independent Monitoring, Analysis, and Compliance With Internal Policies

The events of recent years evidence the need for a strong compliance function in those financial institutions engaged in complex structured finance transactions. Financial institutions should develop and enforce procedures to conduct periodic independent reviews of complex structured finance business activity to ensure that policies and controls are being implemented effectively and to identify complex structured transactions that may have been executed without proper approvals or which may indicate problematic trends. These reviews should cover all the processes involved in creating, analyzing, offering and marketing

transactions complies with applicable accounting standards, consistently applied.

[8] Of course, financial institutions must continue to comply with all applicable laws and regulations governing the making and keeping of records and reports.

complex structured finance products. Procedures should identify departments and personnel responsible for conducting reviews and surveillance. Generally, compliance management oversees this monitoring and analysis, with considerable assistance from personnel in finance and operations.

The establishment of an independent monitoring and analysis program often requires considerable work, as unique reports often need to be set up for specialized products. Elevated monitoring should be directed to those transactions or relationships that the financial institution has identified as presenting heightened legal or reputational risks, based on the factors and considerations discussed above under ''Reputational and Legal Risks,'' or where the transaction or patterns of transactions pose greater credit or market risk. Such monitoring may include more frequent assessments of customer exposures and elevation of findings to a higher level of management in the financial institution.

Compliance functions often are organized along product lines, and this structure may prove challenging when offering complex structured finance transactions that cross product lines. Practices that may assist financial institutions in establishing proactive compliance functions include, but are not limited to:

- Assigning onsite compliance officers for each traded product or business line and establishing a process for communication across product lines, legal entities, or regions
- Developing comprehensive compliance programs that address responsibilities for risk assessment, identifying and managing conflicts of interest, and require policy implementation, training, monitoring and testing
- Establishing clear policies that govern product and transaction approval, require the pre-approval of higher risk transactions, and define standards for marketing materials
- Conducting periodic reviews of derivatives and complex structured transaction documentation and policy compliance
- Reviewing trading activity to identify off market trades, synthetic funding transactions, unusually profitable trades and customer relationships and trades that present reputational concerns
- Conducting a periodic assessment of the supervision of sales and trading personnel and policy compliance.

Audit

The internal audit department of any financial institution is integral to its defense against fraud, unauthorized risk taking and damage to the financial institution's reputation. These are all areas of concern with respect to complex structured finance activities. The complexity and relative profitability of these activities may add to the difficulty of analysis and increase the incentives for risk taking. For these reasons, the internal audit department in conducting its review of complex structured finance activities should audit the financial institution's adherence to its own control procedures, and further assess the adequacy of its policies and procedures given the nature of its complex structured finance business.

Effective internal audit coverage of complex structured finance transactions requires a comprehensive independent audit program that is staffed with personnel that have the necessary skills and experience to identify and report on compliance with financial institution policy and procedures. These necessary skills and experience should include an understanding of the nature and risks of structured transactions, as well as a detailed understanding of the institution's policies and procedures. Internal audit should validate that all business lines and individual desks are complying with the financial institution's standards for complex structured finance transactions and appropriately identify any exceptions. This validation should include transaction testing that confirms policy compliance, the existence of proper approvals, the adequacy of documentation, and the integrity of management reporting. Internal audit should have well-articulated procedures for when to expand the scope of audit activities. Further, internal audit should have procedures for reporting audit findings directly to the financial institution's audit committee and senior management of the audited area. Internal audit should implement follow-up procedures to ensure that audit findings have been resolved and the business unit or department has implemented audit recommendations in a timely manner.

In addition, the complexity of the structured finance activities may cause financial institutions to retain outside consultants, accountants, or lawyers to review the structured product area. The retention of such independent expertise may be a prudent method to fully grasp and control the overall risk resulting from such activities. For example, financial institutions may employ external auditors to test the structured transactions approval process and ensure compliance with its policies and procedures.

The resulting reports and memoranda can provide valuable insight to the financial institution in improving its risk controls and oversight.

Training

Appropriate training on the financial institution's policies and procedures for handling complex structured finance transactions is critical. At the inception of a complex structured finance transaction, financial institution personnel should be aware of the required approval process needed for transaction implementation. The financial institution should retain documentation to support the initial and ongoing training of personnel involved in complex structured finance transactions.

Summary

Financial institutions play a critical role in ensuring the integrity of our financial markets. The ability of financial institutions to fulfill this role and operate in a prudent manner depends on a foundation built upon trust and public confidence and compliance with all applicable legal requirements. The regulatory agencies expect financial institutions involved in structured finance transactions to build and implement enhanced risk management and internal controls systems that effectively ensure compliance with the law and control the risks associated with complex structured finance transactions.

Dated: May 13, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

Dated: May 12, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

By order of the Board of Governors of the Federal Reserve System.

Dated: May 13, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 11th day of May, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the Commission.

Dated: May 13, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–11270 Filed 5–18–04; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6210–01–P; 8010–01–P

Corrections

Federal Register

Vol. 69, No. 97

Wednesday, May 19, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 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

Correction

In proposed rule document 04–10651 beginning on page 26059 in the issue of Tuesday, May 11, 2004, make the following correction:

On page 26060, in the third column, in the second full paragraph titled, *By Hand Delivery or Courier,* in the fifth line, ''OAR-2003-0228'' should read ''OAR 2004-0024''.

[FR Doc. C4–10651 Filed 5–18–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Correction

In notice document 04–10842 beginning on page 26619 in the issue of Thursday, May 13, 2004, make the following correction:

On page 26619, in the third column, the third line after the subject heading is corrected to read ''Consent Decree in *United States* v. *True*''.

[FR Doc. C4–10842 Filed 5–18–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America v. Koch Industries, Inc., Koch Pipeline Company, L.P., and Flint Hill Resources, L.P. Under the Comprehensive Environmental Response, Compensation, and Liability Act

Correction

In notice document 04–10843 appearing on page 26618 in the issue of Thursday, May 13, 2004, make the following correction:

On page 26618, in the third column, in the second paragraph, in the third line above the signature block, ''$725'' should read ''$7.25''.

[FR Doc. C4–10843 Filed 5–18–04; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

RIN 1212–AB00

Participant Notice Voluntary Correction Program

Correction

In notice document 04–10406 beginning on page 25792 in the issue of Friday May 7, 2004, make the following correction:

On page 25793 in the third column, under the heading ''*Notice to PBGC*'' in the 14th and 15th lines, ''or hand at Contracts and Control'' should read ''or hand-delivery to ATTN: Participant Notice VCP, Contracts and Controls''.

[FR Doc. C4–10406 Filed 5–18–04; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4071

RIN 1212–AA95

Assessment of and Relief From Penalties—Participant Notices

Correction

In proposed rule document 04–10407 beginning on page 25797 in the issue of May 7, 2004, make the following correction:

On page 25798, in the first column, under the heading ''**Determination of Participant Count**'' in the fifth line, ''the plan for'' should read ''the plan year for''.

[FR Doc. C4–10407 Filed 5–18–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
May 19, 2004

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2004.

SUMMARY: Pursuant to its authority under 28 U.S.C. § 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of November 1, 2004, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, (202) 502–4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. § 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on December 30, 2003 (*see* 68 FR 75339), and January 14, 2004 (*see* 69 FR 2169). The Commission held a public hearing on the proposed amendments in Washington, DC, on March 17, 2004. After a review of hearing testimony and additional public comment, the Commission promulgated the amendments set forth in this notice. On April 30, 2004, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2004.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

John R. Steer,

Vice Chair.

1. *Amendment:* The Commentary to § 2A1.1 captioned ''Application Notes'' is amended by striking Notes 1 and 2 and inserting the following:

''1. Applicability of Guideline.—This guideline applies in cases of premeditated killing. This guideline also applies when death results from the commission of certain felonies. For example, this guideline may be applied as a result of a cross reference (*e.g.*, a kidnapping in which death occurs), or in cases in which the offense level of a guideline is calculated using the underlying crime (*e.g.*, murder in aid of racketeering).

2. Imposition of Life Sentence.—

(A) Offenses Involving Premeditated Killing.—In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed. A downward departure would not be appropriate in such a case. A downward departure from a mandatory statutory term of life imprisonment is permissible only in cases in which the government files a motion for a downward departure for the defendant's substantial assistance, as provided in 18 U.S.C. 3553(e).

(B) Felony Murder.—If the defendant did not cause the death intentionally or knowingly, a downward departure may be warranted. For example, a downward departure may be warranted if in robbing a bank, the defendant merely passed a note to the teller, as a result of which the teller had a heart attack and died. The extent of the departure should be based upon the defendant's state of mind (*e.g.*, recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, departure below the minimum guideline sentence provided for second degree murder in § 2A1.2 (Second Degree Murder) is not likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death.

3. Applicability of Guideline When Death Sentence Not Imposed.—If the defendant is sentenced pursuant to 18 U.S.C. 3591 *et seq.* or 21 U.S.C. § 848(e), a sentence of death may be imposed under the specific provisions contained in that statute. This guideline applies when a sentence of death is not imposed under those specific provisions.''.

Section 2A1.2(a) is amended by striking ''33'' and inserting ''38''.

Section 2A1.2 is amended by striking the commentary captioned ''Background'' and inserting the following:

''Application Note:

1. Upward Departure Provision.—If the defendant's conduct was exceptionally heinous, cruel, brutal, or degrading to the victim, an upward departure may be warranted. *See* § 5K2.8 (Extreme Conduct).''.

Section 2A1.3(a) is amended by striking ''25'' and inserting ''29''.

Section 2A1.3 is amended by striking the commentary captioned ''Background''.

Section 2A1.4(a) is amended in subdivision (1) by striking ''conduct was criminally negligent'' and inserting ''offense involved criminally negligent conduct''; and by striking subdivision (2) and inserting the following:

''(2) (Apply the greater):

(A) 18, if the offense involved reckless conduct; or

(B) 22, if the offense involved the reckless operation of a means of transportation.''.

Section 2A1.4 is amended by adding at the end the following:

''(b) Special Instruction.

(1) If the offense involved the involuntary manslaughter of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the involuntary manslaughter of each person had been contained in a separate count of conviction.''.

The Commentary to § 2A1.4 captioned ''Application Notes'' is amended in the heading by striking ''Notes'' and inserting ''Note''; and by striking Notes 1 and 2 and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Criminally negligent' means conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes.

'Means of transportation' includes a motor vehicle (including an automobile or a boat) and a mass transportation vehicle. 'Mass transportation' has the meaning given that term in 18 U.S.C. § 1993(c)(5).

'Reckless' means a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that

a reasonable person would exercise in such a situation. 'Reckless' includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. § 1112. A homicide resulting from driving a means of transportation, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless.''.

Section 2A1.5(a) is amended by striking ''28'' and inserting ''33''.

Section 2A2.1(a) is amended in subdivision (1) by striking ''28'' and inserting ''33''; and in subdivision (2) by striking ''22'' and inserting ''27''.

Section 2A2.1(b)(1) is amended by striking ''(A) If'' and inserting ''If (A)''; and by striking ''if'' each place it appears.

The Commentary to § 2A2.1 captioned ''Application Notes'' is amended by striking Notes 1 through 3 and inserting the following:

''1. Definitions.—For purposes of this guideline:

'First degree murder' means conduct that, if committed within the special maritime and territorial jurisdiction of the United States, would constitute first degree murder under 18 U.S.C. § 1111.

'Permanent or life-threatening bodily injury' and 'serious bodily injury' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. Upward Departure Provision.—If the offense created a substantial risk of death or serious bodily injury to more than one person, an upward departure may be warranted.''.

Section 2A2.2(a) is amended by striking ''15'' and inserting ''14''.

Section 2A2.2(b)(2) is amended by striking ''(A) If'' and inserting ''If (A)''; and by striking ''if'' each place it appears.

Section 2A2.2(b)(3) is amended in subdivision (A) by striking ''2'' and inserting ''3''; in subdivision (B) by striking ''4'' and inserting ''5''; in subdivision (C) by striking ''6'' and inserting ''7''; in subdivision (D) by striking ''3'' and inserting ''4''; and in subdivision (E) by striking ''5'' and inserting ''6''.

Section 2A2.2.(b)(3) is amended by striking ''Provided, however,'' and all that follows through ''not exceed 9 levels.'' and inserting the following:

''However, the cumulative adjustments from application of subdivisions (2) and (3) shall not exceed 10 levels.''.

Section 2A2.2(b) is amended by adding at the end the following:

''(6) If the defendant was convicted under 18 U.S.C. § 111(b) or § 115, increase by 2 levels.''.

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended by striking Note 2 and all that follows through ''For purposes of subsection (b)(1),'' and inserting the following:

''2. Application of Subsection (b)(1).—For purposes of subsection (b)(1),'';

and by adding at the end the following:

''3. Application of Subsection (b)(2).—In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

4. Application of Official Victim Adjustment.—If subsection (b)(6) applies, § 3A1.2 (Official Victim) also shall apply.''.

The Commentary to § 2A2.2 captioned ''Background'' is amended by adding at the end the following:

''Subsection (b)(6) implements the directive to the Commission in subsection 11008(e) of the 21st Century Department of Justice Appropriations Act (the 'Act'), Public Law 107–273. The enhancement in subsection (b)(6) is cumulative to the adjustment in § 3A1.2 (Official Victim) in order to address adequately the directive in section 11008(e)(2)(D) of the Act, which provides that the Commission shall consider 'the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by' 18 U.S.C. §§ 111 and 115.''.

Section 2A2.3(a) is amended in subdivision (1) by striking ''6'' and inserting ''7'', and by striking ''conduct'' and inserting ''offense''; and in subdivision (2) by striking ''3'' and inserting ''4''.

Section 2A2.3(b)(1) is amended by inserting ''(A) the victim sustained bodily injury, increase by 2 levels; or (B)'' after ''If''.

Section 2A2.3 is amended by adding at the end the following:

''(c) Cross Reference

(1) If the conduct constituted aggravated assault, apply § 2A2.2 (Aggravated Assault).''.

The Commentary to § 2A2.3 captioned ''Application Notes'' is amended by striking Notes 1 through 3 and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Bodily injury', 'dangerous weapon', and 'firearm' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

'Minor assault' means a misdemeanor assault, or a felonious assault not covered by § 2A2.2 (Aggravated Assault).

'Substantial bodily injury' means 'bodily injury which involves (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty.' *See* 18 U.S.C. § 113(b)(1).

2. Application of Subsection (b)(1).—Conduct that forms the basis for application of subsection (a)(1) also may form the basis for application of the enhancement in subsection (b)(1)(A) or (B).''.

Section 2A2.4(a) is amended by striking ''6'' and inserting ''10''.

Section 2A2.4(b) is amended by striking ''Characteristic'' and inserting ''Characteristics''; by striking in subdivision (1) ''If the conduct involved physical contact, or if'' and inserting ''If (A) the offense involved physical contact; or (B)''; and by adding at the end the following:

''(2) If the victim sustained bodily injury, increase by 2 levels.''.

The Commentary to § 2A2.4 captioned ''Application Notes'' is amended by striking Notes 1 and 2 and inserting the following:

''1. Definitions.—For purposes of this guideline, 'bodily injury', 'dangerous weapon', and 'firearm' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. Application of Certain Chapter Three Adjustments.—The base offense level incorporates the fact that the victim was a governmental officer performing official duties. Therefore, do not apply § 3A1.2 (Official Victim) unless, pursuant to subsection (c), the offense level is determined under § 2A2.2 (Aggravated Assault). Conversely, the base offense level does not incorporate the possibility that the defendant may create a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement official (although an offense under 18 U.S.C. § 758 for fleeing or evading a law enforcement checkpoint at high speed will often, but not always, involve the creation of that risk). If the defendant creates that risk and no higher guideline adjustment is applicable for the conduct creating the risk, apply § 3C1.2 (Reckless Endangerment During Flight).''.

The Commentary to § 2A2.4 captioned ''Application Notes'' is amended in Note 3 by inserting ''Upward Departure Provision.—'' before ''The base''.

The Commentary to § 2A2.4 captioned ''Background'' is amended by striking the last sentence.

Section 3A1.2 is amended to read as follows:

''§ 3A1.2. Official Victim

(Apply the greatest):

(a) If (1) the victim was (A) a government officer or employee; (B) a former government officer or employee; or (C) a member of the immediate family of a person described in subdivision (A) or (B); and (2) the offense of conviction was motivated by such status, increase by 3 levels.

(b) If subsection (a)(1) and (2) apply, and the applicable Chapter Two guideline is from Chapter Two, Part A (Offenses Against the Person), increase by 6 levels.

(c) If, in a manner creating a substantial risk of serious bodily injury, the defendant or a person for whose conduct the defendant is otherwise accountable—

(1) knowing or having reasonable cause to believe that a person was a law enforcement officer, assaulted such officer during the course of the offense or immediate flight therefrom; or

(2) knowing or having reasonable cause to believe that a person was a prison official, assaulted such official while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility,

increase by 6 levels.''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended in Note 2 by striking the second sentence; and by striking in the third sentence '', Part A,''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended in Note 3 by striking ''Subsection (a)'' and inserting ''Subsections (a) and (b)''; and by striking ''in subsection (a)'' and inserting '', for purposes of subsections (a) and (b),''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended in Note 4 by striking ''Subsection (b)'' each place it appears and inserting ''Subsection (c)''; by striking ''subsection (b)'' each place it appears and inserting ''subsection (c)''; and by striking ''and control'' each place it appears and inserting ''or control''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended by striking Note 5 and inserting the following:

''5. Upward Departure Provision.—If the official victim is an exceptionally high-level official, such as the President or the Vice President of the United States, an upward departure may be warranted due to the potential disruption of the governmental function.''.

Reason for Amendment: This amendment increases the base offense levels for the homicide and manslaughter guidelines to address longstanding proportionality concerns and new proportionality issues prompted by changes to other Chapter Two guidelines pursuant to the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. 108–21 (the ''PROTECT Act''). It also amends the assault guidelines and the adjustment at § 3A1.2 (Official Victim) to implement the directive in section 11008(e) of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273 (the ''Act'').

First, this amendment makes a number of changes to the homicide guidelines. The amendment revises the commentary in guideline § 2A1.1 (First Degree Murder) and deletes outdated language. One effect of this revision is to clarify that a downward departure from a mandatory statutory sentence of life imprisonment is permissible only in cases in which the government files a motion for a downward departure for the defendant's substantial assistance, as provided in 18 U.S.C. § 3553(e).

In addition, the Commission received public comment that the guideline penalties for all homicides, other than for first degree murder, were inadequate and in need of review. An examination of the homicide and manslaughter guidelines also was prompted by section 104 of the PROTECT Act, which directed the Commission to increase the base offense level for § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint). The Commission increased the base offense level for kidnapping by eight levels, from base offense level 24 to base offense level 32, effective May 30, 2003. This increase brought kidnapping without injury to within one level of the base offense of level 33 for second degree murder. The Commission examined data on second degree murder offenses and found that in 2002, courts departed upward from the guideline range in 34.3% of the cases. The Commission also received public comment expressing concern that an individual convicted of second degree murder who accepted responsibility might serve as little as eight years' imprisonment. By increasing the base offense level in § 2A1.2 (Second Degree Murder) to level 38, the Commission has established an approximate 20-year sentence of imprisonment for second degree murder.

Data also showed a high level of upward departure sentences for some other homicide offenses, such as voluntary manslaughter, which had a 28.6% upward departure rate in 2002. Based upon such indications that the sentences may be inadequate for these offenses, the Commission increased the base offense levels of many of the homicide guidelines to punish them more appropriately and with an eye toward restoring the proportionality found in the original guidelines. For example, the original base offense level of 28 for attempted first degree murder, § 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) is five levels lower than the original base offense level of level 33 for second degree murder. In this amendment, the five-level increase from a base offense level of level 28 to level 33 for attempted first degree murder mirrors the five-level increase for second degree murder from offense level of level 33 to level 38 and maintains the five-level difference that exists between the two. The amendment increases the base offense levels in the guidelines for §§ 2A1.2, 2A1.3 (Voluntary Manslaughter), 2A1.5 (Conspiracy or Solicitation to Commit Murder), and 2A2.1.

Additionally, the amendment adds a third alternative base offense level in § 2A1.4 (Involuntary Manslaughter) of level 22 for reckless involuntary manslaughter offenses that involved the reckless operation of a means of transportation. This new offense level completes work undertaken in the previous amendment cycle to address disparities between federal and state sentences for vehicular manslaughter and to account for the 1994 increase in the statutory maximum term of imprisonment from three to six years. The new alternative offense level focusing on the reckless operation of a means of transportation addresses concerns raised by some members of Congress and comports with a recommendation from the Commission's Native American Advisory Group that vehicular manslaughter involving alcohol or drugs should be sentenced at offense level 22. The amendment also adds a special instruction to apply § 3D1.2 (Groups of Closely Related Counts) as if there had been a separate count of conviction for each victim in cases in which more than one victim died. The purpose of the instruction is to ensure an incremental increase in punishment for single count offenses involving multiple victims.

Second, this amendment makes a number of changes to the assault guidelines and the Chapter Three adjustment relating to official victims, to implement the congressional directive and the changes in statutory maximum terms of imprisonment in the 21st

Century Department of Justice Appropriations Authorization Act. The Act increased the statutory maximum term of imprisonment for a number of offenses against current or former officers or employees of the United States, including Federal judges and magistrate judges, their families, or persons assisting in the performance of those official duties, or offenses committed on account of those duties. In response to the directive, the Commission added a new specific offense characteristic in § 2A2.2 (Aggravated Assault) to provide a two-level increase if the defendant was convicted under 18 U.S.C. § 111(b) or § 115. The Commission also amended the guideline to decrease the base offense level from level 15 to level 14, based upon information received from the Native American Advisory Group and studies indicating that federal aggravated assault sentences generally are more severe than many state aggravated assault sentences. To ensure that individuals who cause bodily injury to victims do not benefit from this decrease in the base offense level, the specific offense characteristics addressing degrees of bodily injury each were increased by one level. To maintain proportionality, reflect increased statutory penalties, and comply with the directive, the two non-aggravated assault guidelines also were amended. For § 2A2.3 (Minor Assault), the alternative base offense levels each were increased by one level, a specific offense characteristic was added to provide a two-level enhancement if the victim sustained bodily injury, and a cross-reference to § 2A2.2 was added. Similarly, § 2A2.4 (Obstructing or Impeding Officers) was amended by increasing the base offense level to level 10, and by adding a specific offense characteristic providing a two-level increase if the victim sustained bodily injury.

The amendment restructures § 3A1.2 (Official Victim) and provides a two-tiered adjustment. The amendment maintains the three-level adjustment for offenses motivated by the status of the official victim, but increases the adjustment to six levels if that defendant's offense guideline was from Chapter Two, Part A (Offenses Against the Person). For example, a threat against a federal judge sentenced pursuant to § 2A6.1 (Threatening or Harassing Communications) that is calculated at base offense level 12 could have received, before this amendment, a three-level enhancement under § 3A1.2, which would have resulted in an adjusted offense level of level 15 and a guideline range of 18 to 24 months. Under this amendment, the defendant could receive a six-level adjustment, resulting in an enhanced offense level of level 18 and a guideline range of 27 to 33 months. The six level enhancement also applies to assaultive conduct against law enforcement officers or prison officials if the defendant committed the assault in a manner creating a substantial risk of serious bodily injury. This increase comports with the directive in the Act to ''ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense'' for offenses against federal officers, officials and employees.

2. *Amendment:* Section 2A3.1(a) is amended by striking ''27'' and inserting ''30''.

Section 2A3.1(b)(1) is amended by striking ''was committed by the means set forth'' and inserting ''involved conduct described''.

Section 2A3.1(b)(6) is amended by striking ''Internet-access device'' and inserting ''interactive computer service''.

Section 2A3.1(c) is amended in the heading by striking ''Cross Reference'' and inserting ''Cross References''.

Section 2A3.1(c)(1) is amended by inserting '', if the resulting offense level is greater than that determined above'' after ''Murder)''.

Section 2A3.1(c) is amended by adding at the end the following:

''(2) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.''.

Section 2A3.1(d)(1) is amended by striking ''a correctional facility and the victim was a corrections employee'' and inserting ''the custody or control of a prison or other correctional facility and the victim was a prison official''; and by striking ''(a)'' and inserting ''(c)(2)''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by striking Notes 1 through 3 and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Abducted', 'permanent or life-threatening bodily injury', and 'serious bodily injury' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions). However, for purposes of this guideline, ''serious bodily injury'' means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

'Custody or control' and 'prison official' have the meaning given those terms in Application Note 4 of the Commentary to § 3A1.2 (Official Victim).

'Child pornography' has the meaning given that term in 18 U.S.C. § 2256(8).

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Distribution' means any act, including possession with intent to distribute, production, transportation, and advertisement, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography.

'Victim' includes an undercover law enforcement officer.

2. Application of Subsection (b)(1).—For purposes of subsection (b)(1), 'conduct described in 18 U.S.C. § 2241(a) or (b)' is: (i) using force against the victim; (ii) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the victim unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar

substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.

3. Application of Subsection (b)(3).—

(A) Care, Custody, or Supervisory Control.—Subsection (b)(3) is to be construed broadly and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) Inapplicability of Chapter Three Adjustment.—If the enhancement in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 4 by inserting before ''The enhancement'' the following:

''Application of Subsection (b)(6).—

(A) Misrepresentation of Participant's Identity.—'';

and by striking the last paragraph and inserting the following:

''(B) Use of a Computer or Interactive Computer Service.—Subsection (b)(6)(B) provides an enhancement if a computer or an interactive computer service was used to (i) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (ii) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by redesignating Note 5 as Note 6; and by inserting after Note 4 the following:

''5. Application of Subsection (c)(1).—

(A) In General.—The cross reference in subsection (c)(1) is to be construed broadly and includes all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(B) Definition.—For purposes of subsection (c)(1), 'sexually explicit conduct' has the meaning given that term in 18 U.S.C. § 2256(2).''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 6, as redesignated by this amendment, by inserting ''Upward Departure Provision.''—before ''If a victim''.

Section 2A3.2 is amended by striking subsection (a) and inserting the following:

''(a) Base Offense Level: 18''.

Section 2A3.2(b)(1) is amended by striking ''victim'' and inserting ''minor''; and by striking ''2 levels'' and inserting ''4 levels''.

Section 2A3.2(b) is amended by striking subdivisions (2) through (4) and inserting the following:

''(2) If (A) subsection (b)(1) does not apply; and (B)(i) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct; or (ii) a participant otherwise unduly influenced the minor to engage in prohibited sexual conduct, increase by 4 levels.

(3) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct, increase by 2 levels.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 1 by inserting after ''Definitions.—For purposes of this guideline:'' the following:

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 16 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 16 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 16 years.'';

and by striking '' 'Sexual act' '' and all that follows through ''16 years.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 2 by striking ''Custody, Care, and Supervisory Control Enhancement.—Subsection (b)(1)'' and inserting the following:

''Custody, Care, or Supervisory Control Enhancement.—

(A) In General.—Subsection (b)(1)'';

by striking ''victim'' each place it appears and inserting ''minor''; and by adding at the end the following:

''(B) Inapplicability of Chapter Three Adjustment.—If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended by striking Notes 3 through 5 and inserting the following:

''3. Application of Subsection (b)(2).—

(A) Misrepresentation of Identity.—The enhancement in subsection (b)(2)(B)(i) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Subsection (b)(2)(B)(i) is intended to apply only to misrepresentations made directly to the minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(2)(B)(i) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(2)(B)(i) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) Undue Influence.—In determining whether subsection (b)(2)(B)(ii) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption, for purposes of subsection (b)(2)(B)(ii), that such participant unduly influenced the minor to engage in prohibited sexual conduct. In such a case, some degree of

undue influence can be presumed because of the substantial difference in age between the participant and the minor.

4. Application of Subsection (b)(3).—Subsection (b)(3) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with the minor or with a person who exercises custody, care, or supervisory control of the minor.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended by redesignating Notes 6 and 7 as Notes 5 and 6, respectively.

The Commentary to § 2A3.2 captioned ''Background'' is amended by striking ''or chapter 117 of title 18, United States Code''; by striking ''victim'' each place it appears and inserting ''minor''; and by striking ''victim's'' and inserting ''minor's''.

Section 2A3.3(a) is amended by striking ''9'' and inserting ''12''.

Section 2A3.3(b)(1) is amended by striking ''(A)''; and by striking ''; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct''.

Section 2A3.3(b)(2) is amended by striking ''(A)''; by striking ''; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct''; and by striking ''Internet-access device'' and inserting ''interactive computer service''.

The Commentary to § 2A3.3 captioned ''Application Notes'' is amended in Note 1 by striking ''For purposes of this guideline—and inserting the following:

''Definitions.''—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).''.

The Commentary to § 2A3.3 captioned ''Application Notes'' is amended by striking Notes 2 and 3 and inserting the following:

''2. Application of Subsection (b)(1).—The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(1) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor.

The misrepresentation to which the enhancement in subsection (b)(1) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

3. Application of Subsection (b)(2).—Subsection (b)(2) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(2) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.''.

Section 2A3.4(a) is amended by striking subdivisions (1) through (3) and inserting the following:

''(1) 20, if the offense involved conduct described in 18 U.S.C. § 2241(a) or (b);

(2) 16, if the offense involved conduct described in 18 U.S.C. § 2242; or

(3) 12, otherwise.''.

Section 2A3.4(b)(1) is amended by striking ''16'' each place it appears and inserting ''20''.

Section 2A3.4(b) is amended by striking subdivisions (4) through (6) and inserting the following:

''(4) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.

(5) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 1 by striking ''For purposes of this guideline—'' and all the follows through ''18 years.'' and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended by striking Notes 2 and 3 and inserting the following:

''2. Application of Subsection (a)(1).—For purposes of subsection (a)(1), 'conduct described in 18 U.S.C. § 2241(a) or (b)' is: (i) using force against the victim; (ii) threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping; (iii) rendering the victim unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.

3. Application of Subsection (a)(2).—For purposes of subsection (a)(2), 'conduct described in 18 U.S.C. § 2242' is: (i) threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or (ii) victimizing an individual who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 4 by inserting before ''Subsection (b)(3)'' the following:

''Application of Subsection (b)(3).—

(A) Custody, Care, or Supervisory Control.—'';

and by adding at the end the following:

''(B) Inapplicability of Chapter Three Adjustment.—If the enhancement in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended by striking Note 5; and by redesignating Notes 6 and 7 as Notes 5 and 6, respectively.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 5, as redesignated by this amendment, by inserting ''Misrepresentation of a Participant's Identity.—'' before ''The enhancement''; by striking ''(A)'' each place it appears; and by striking ''; or (B) facilitate

transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct'' each place it appears.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 6, as redesignated by this amendment, by striking the text and inserting the following:

''Application of Subsection (b)(5).—Subsection (b)(5) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.''.

The Commentary to § 2A3.4 captioned ''Background'' is amended by striking ''For cases involving'' and all that follows through ''level 6.''.

Chapter Two, Part G, Subpart 1 is amended by striking § 2G1.1 and its accompanying commentary and inserting the following:

''§ 2G1.1. Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor

(a) Base Offense Level: 14

(b) Specific Offense Characteristic

(1) If the offense involved fraud or coercion, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) or 18 U.S.C. § 2242, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction.

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. § 1328 (only if the offense involved a victim other than a minor); 18 U.S.C. §§ 1591 (only if the offense involved a victim other than a minor), 2421 (only if the offense involved a victim other than a minor), 2422(a) (only if the offense involved a victim other than a minor).

Application Notes:

1. Definitions.—For purposes of this guideline:

'Commercial sex act' has the meaning given that term in 18 U.S.C. § 1591(c)(1).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Promoting a commercial sex act' means persuading, inducing, enticing, or coercing a person to engage in a commercial sex act, or to travel to engage in, a commercial sex act.

'Victim' means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, a commercial sex act or prohibited sexual conduct, whether or not the person consented to the commercial sex act or prohibited sexual conduct. Accordingly, ''victim'' may include an undercover law enforcement officer.

2. Application of Subsection (b)(1).—Subsection (b)(1) provides an enhancement for fraud or coercion that occurs as part of the offense and anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. *See* Chapter Five, Part K (Departures). For purposes of subsection (b)(1), 'coercion' includes any form of conduct that negates the voluntariness of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. This characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. Application of Chapter Three Adjustment.—For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of a commercial sex act or prohibited sexual conduct in respect to another victim.

4. Application of Subsection (c)(1).—

(A) Conduct Described in 18 U.S.C. § 2241(a) or (b).—For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2241(a) or (b) is: (i) using force against the victim; (ii) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the victim unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.

(B) Conduct Described in 18 U.S.C. § 2242.—For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2242 is: (i) threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (ii) victimizing a victim who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

5. Special Instruction at Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

6. Upward Departure Provision.—If the offense involved more than ten victims, an upward departure may be warranted.

Background: This guideline covers offenses that involve promoting prostitution or prohibited sexual conduct with an adult through a variety of means. Offenses that involve promoting prostitution or prohibited sexual conduct with an adult are sentenced under this guideline, unless criminal sexual abuse occurs as part of the offense, in which case the cross reference would apply.

This guideline also covers offenses under section 1591 of title 18, United States Code, that involve recruiting or transporting a person, other than a minor, in interstate commerce knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act.

Offenses of promoting prostitution or prohibited sexual conduct in which a minor victim is involved are to be sentenced under § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor).''.

Chapter Two, Part G, Subpart 1, is amended by adding at the end the

following new guideline and accompanying commentary:

''§ 2G1.3. Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor

(a) Base Offense Level: 24

(b) Specific Offense Characteristics

(1) If (A) the defendant was a parent, relative, or legal guardian of the minor; or (B) the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(2) If (A) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct; or (B) a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct, increase by 2 levels.

(3) If the offense involved the use of a computer or an interactive computer service to (A) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor, increase by 2 levels.

(4) If the offense involved (A) the commission of a sex act or sexual contact; or (B) a commercial sex act, increase by 2 levels.

(5) If the offense involved a minor who had not attained the age of 12 years, increase by 8 levels.

(c) Cross References

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

(2) If a minor was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.

(3) If the offense involved conduct described in 18 U.S.C. § 2241 or § 2242, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), if the resulting offense level is greater than that determined above. If the offense involved interstate travel with intent to engage in a sexual act with a minor who had not attained the age of 12 years, or knowingly engaging in a sexual act with a minor who had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the ''consent'' of the minor.

(d) Special Instruction

(1) If the offense involved more than one minor, Chapter Three, Part D (Multiple Counts) shall be applied as if the persuasion, enticement, coercion, travel, or transportation to engage in a commercial sex act or prohibited sexual conduct of each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. § 1328 (only if the offense involved a minor); 18 U.S.C. §§ 1591 (only if the offense involved a minor), 2421 (only if the offense involved a minor), 2422 (only if the offense involved a minor), 2422(b), 2423, 2425.

Application Notes:

1. Definitions.—For purposes of this guideline:

'Commercial sex act' has the meaning given that term in 18 U.S.C. § 1591(c)(1).

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Illicit sexual conduct' has the meaning given that term in 18 U.S.C. § 2423(f).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexual act' has the meaning given that term in 18 U.S.C. § 2246(2).

'Sexual contact' has the meaning given that term in 18 U.S.C. § 2246(3).

2. Application of Subsection (b)(1).—

(A) Custody, Care, or Supervisory Control.—Subsection (b)(1) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) Inapplicability of Chapter Three Adjustment.—If the enhancement under subsection (b)(1) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. Application of Subsection (b)(2).—

(A) Misrepresentation of Participant's Identity.—The enhancement in subsection (b)(2)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct. Subsection (b)(2)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(2)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(2)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) Undue Influence.—In determining whether subsection (b)(2)(B) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption, for purposes of subsection (b)(2)(B), that

such participant unduly influenced the minor to engage in prohibited sexual conduct. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the minor.

4. Application of Subsection (b)(3).—Subsection (b)(3) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(3) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

5. Application of Subsection (c).—

(A) Application of Subsection (c)(1).—The cross reference in subsection (c)(1) is to be construed broadly and includes all instances in which the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice, advertisement or other method, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. For purposes of subsection (c)(1), ''sexually explicit conduct'' has the meaning given that term in 18 U.S.C. § 2256(2).

(B) Application of Subsection (c)(3).—For purposes of subsection (c)(3):

(i) Conduct described in 18 U.S.C. § 2241(a) or (b) is: (I) using force against the minor; (II) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (III) rendering the minor unconscious; or (IV) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

(ii) Conduct described in 18 U.S.C. § 2241(c) is: (I) interstate travel with intent to engage in a sexual act with a minor who has not attained the age of 12 years; (II) knowingly engaging in a sexual act with a minor who has not attained the age of 12 years; or (III) knowingly engaging in a sexual act under the circumstances described in 18 U.S.C. § 2241(a) and (b) with a minor who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging).

(iii)Conduct described in 18 U.S.C. § 2242 is: (I) threatening or placing the minor in fear (other than by threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (II) victimizing a minor who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

6. Application of Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each minor transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate minor. Consequently, multiple counts involving more than one minor are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes travel or transportation to engage in a commercial sex act or prohibited sexual conduct in respect to more than one minor, whether specifically cited in the count of conviction, each such minor shall be treated as if contained in a separate count of conviction.

7. Upward Departure Provision.—If the offense involved more than ten minors, an upward departure may be warranted.

Background: This guideline covers offenses under chapter 117 of title 18, United States Code, involving transportation of a minor for illegal sexual activity through a variety of means. This guideline also covers offenses involving a minor under section 1591 of title 18, United States Code. Offenses involving an individual who had attained the age of 18 years are covered under § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor).''.

Section 2G2.1(a) is amended by striking ''27'' and inserting ''32''.

Section 2G2.1(b) is amended in subdivision (1) by striking ''victim'' and inserting ''minor''; by redesignating subdivisions (2) and (3) as subdivisions (5) and (6), respectively; and by inserting after subdivision (1) the following:

''(2) (Apply the greater) If the offense involved—

(A) the commission of a sexual act or sexual contact, increase by 2 levels; or

(B) (i) the commission of a sexual act; and (ii) conduct described in 18 U.S.C. § 2241(a) or (b), increase by 4 levels.

(3) If the offense involved distribution, increase by 2 levels.

(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.''.

Section 2G2.1(b)(6), as redesignated by this amendment, is amended by striking ''Internet-access device'' and inserting ''interactive computer service''.

Section 2G2.1 is amended by redesignating subsection (c) as subsection (d); and by inserting after subsection (b) the following:

''(c) Cross Reference

(1) If the victim was killed in circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.''.

The Commentary to § 2G2.1 captioned ''Statutory Provisions'' is amended by striking ''(a), (b), (c)(1)(B), 2260'' and inserting '', 2260(b)''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended by striking Notes 1 through 5 and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Distribution' means any act, including possession with intent to distribute, production, advertisement, and transportation, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. § 2256(2).

2. Application of Subsection (b)(2).—For purposes of subsection (b)(2):

'Conduct described in 18 U.S.C. § 2241(a) or (b)' is: (i) using force against the minor; (ii) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the minor unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

'Sexual act' has the meaning given that term in 18 U.S.C. § 2246(2).

'Sexual contact' has the meaning given that term in 18 U.S.C. § 2246(3).

3. Application of Subsection (b)(5).—

(A) In General.—Subsection (b)(5) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) Inapplicability of Chapter Three Adjustment.—If the enhancement in subsection (b)(5) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

4. Application of Subsection (b)(6).—

(A) Misrepresentation of Participant's Identity.—The enhancement in subsection (b)(6)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Subsection (b)(6)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(6)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(6)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) Use of a Computer or an Interactive Computer Service.—Subsection (b)(6)(B) provides an enhancement if the offense involved the use of a computer or an interactive computer service to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material or otherwise to solicit participation by a minor in such conduct for such purpose. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

5. Application of Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each minor exploited is to be treated as a separate minor. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). Subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes more than one minor being exploited, whether specifically cited in the count of conviction or not, each such minor shall be treated as if contained in a separate count of conviction.''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended in Note 6 by striking ''victims'' and inserting ''minors''.

Chapter Two, Part G, Subpart 2, is amended by striking §§ 2G2.2 and 2G2.4 and their accompanying commentary and inserting after § 2G2.1 the following:

''§ 2G2.2. Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor

(a) Base Offense Level:

(1) 18, if the defendant is convicted of 18 U.S.C. § 1466A(b), § 2252(a)(4), or § 2252A(a)(5).

(2) 22, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; (B) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (C) the defendant did not intend to traffic in, or distribute, such material, decrease by 2 levels.

(2) If the material involved a prepubescent minor or a minor who had not attained the age of 12 years, increase by 2 levels.

(3) (Apply the greatest) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subdivision (E), increase by 6 levels.

(E) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(F) Distribution other than distribution described in subdivisions (A) through (E), increase by 2 levels.

(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(5) If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by 5 levels.

(6) If the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, increase by 2 levels.

(7) If the offense involved—

(A) at least 10 images, but fewer than 150, increase by 2 levels;

(B) at least 150 images, but fewer than 300, increase by 3 levels;

(C) at least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1466A, 2252, 2252A, 2260(b).

Application Notes:

1. Definitions.—For purposes of this guideline:

''Computer'' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

''Distribution'' means any act, including possession with intent to distribute, production, advertisement, and transportation, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

''Distribution for pecuniary gain'' means distribution for profit.

''Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain'' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. ''Thing of value'' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the ''thing of value'' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

''Distribution to a minor'' means the knowing distribution to an individual who is a minor at the time of the offense.

''Interactive computer service'' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

''Minor'' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

''Pattern of activity involving the sexual abuse or exploitation of a minor'' means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same minor; or (C) resulted in a conviction for such conduct.

''Prohibited sexual conduct '' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

''Sexual abuse or exploitation'' means any of the following: (A) conduct described in 18 U.S.C. § 2241, § 2242, § 2243, § 2251, § 2251A, § 2260(b), § 2421, § 2422, or § 2423; (B) an offense under state law, that would have been an offense under any such section if the offense had occurred within the special maritime or territorial jurisdiction of the United States; or (C) an attempt or conspiracy to commit any of the offenses under subdivisions (A) or (B). ''Sexual abuse or exploitation'' does not include possession, receipt, or trafficking in material relating to the sexual abuse or exploitation of a minor.

2. Application of Subsection (b)(4).—Subsection (b)(4) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, receive, or distribute such materials.

3. Application of Subsection (b)(5).—A conviction taken into account under subsection (b)(5) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. Application of Subsection (b)(7).—

(A) Definition of ''Images''.—''Images'' means any visual depiction, as defined in 18 U.S.C. § 2256(5), that constitutes child pornography, as defined in 18 U.S.C. § 2256(8).

(B) Determining the Number of Images.—For purposes of determining the number of images under subsection (b)(7):

(i) Each photograph, picture, computer or computer-generated image, or any similar visual depiction shall be considered to be one image. If the number of images substantially underrepresents the number of minors depicted, an upward departure may be warranted.

(ii) Each video, video-clip, movie, or similar recording shall be considered to have 75 images. If the length of the recording is substantially more than 5 minutes, an upward departure may be warranted.

5. Application of Subsection (c)(1).—

(A) In General.—The cross reference in subsection (c)(1) is to be construed broadly and includes all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(B) Definition.—''Sexually explicit conduct '' has the meaning given that term in 18 U.S.C. § 2256(2).

6. Upward Departure Provision.—If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(5) does not apply, an upward departure may be warranted. In addition, an upward departure may be warranted if the defendant received an enhancement under subsection (b)(5) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved.

Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add subdivision (7), effective April 30, 2003.''.

Section 2G3.1 is amended in the heading by adding at the end ''; Misleading Domain Names''.

Section 2G3.1(b)(1) is amended by redesignating subdivisions (D) and (E) as subdivisions (E) and (F), respectively; and by inserting after subdivision (C) the following:

''(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subdivision (E), increase by 6 levels.'';

and in subdivision (F), as redesignated by this amendment, by striking ''(D)'' and inserting ''(E)''.

Section 2G3.1(b) is amended by redesignating subdivision (2) as subdivision (4); and by inserting after subdivision (1) the following:

''(2) If the offense involved the use of a misleading domain name on the Internet with the intent to deceive a minor into viewing material on the Internet that is harmful to minors, increase by 2 levels.

(3) If the offense involved the use of a computer or an interactive computer service, increase by 2 levels.''.

The Commentary to § 2G3.1 captioned ''Statutory Provisions'' is amended by inserting'', 2252B'' after ''1470''.

The Commentary to § 2G3.1 captioned ''Application Note'' is amended by striking ''Note'' in the heading and inserting ''Notes''; and by striking Application Note 1 and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Distribution' means any act, including possession with intent to distribute, production, advertisement, and transportation, related to the transfer of obscene matter. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense.

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Material that is harmful to minors' has the meaning given that term in 18 U.S.C. § 2252B(d).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. § 2256(2).

2. Inapplicability of Subsection (b)(3).—If the defendant is convicted of 18 U.S.C. § 2252B, subsection (b)(3) shall not apply.

3. Application of Subsection (b)(4).—Subsection (b)(4) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, receive, or distribute such materials.''.

Section 3D1.2(d) is amended by striking ''2G2.4'' and inserting ''2G3.1''.

Section 5B1.3(d)(7) is amended by striking ''If the instant'' and all that follows through ''sex offenders.'' and inserting the following:

''If the instant offense of conviction is a sex offense, as defined in Application Note 1 of the Commentary to § 5D1.2 (Term of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

(B) A condition limiting the use of a computer or an interactive computer service in cases in which the defendant used such items.''.

Section 5D1.2 is amended by striking subsections (a) through (c) and inserting following:

''(a) Except as provided in subsections (b) and (c), if a term of supervised release is ordered, the length of the term shall be:

(1) At least three years but not more than five years for a defendant convicted of a Class A or B felony.

(2) At least two years but not more than three years for a defendant convicted of a Class C or D felony.

(3) One year for a defendant convicted of a Class E felony or a Class A misdemeanor.

(b) Notwithstanding subdivisions (a)(1) through (3), the length of the term of supervised release shall be not less than the minimum term of years specified for the offense under subdivisions (a)(1) through (3) and may be up to life, if the offense is—

(1) any offense listed in 18 U.S.C. § 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or

(2) a sex offense.

(Policy Statement) If the instant offense of conviction is a sex offense, however, the statutory maximum term of supervised release is recommended.

(c) The term of supervised release imposed shall be not less than any statutorily required term of supervised release.''.

Section 5D1.3(d)(7) is amended by striking ''If the instant'' and all that follows through ''sex offenders.'' and inserting the following:

''If the instant offense of conviction is a sex offense, as defined in Application Note 1 of the Commentary to § 5D1.2 (Term of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

(B) A condition limiting the use of a computer or an interactive computer service in cases in which the defendant used such items.''.

Section 7B1.3(g) is amended by striking ''Where'' each place it appears and inserting ''If''; and in subdivision (2) by striking ''and the term of imprisonment imposed is less than the maximum term of imprisonment imposable upon revocation''.

The Commentary to § 7B1.3 captioned ''Application Notes'' is amended by striking ''and imposition of less than the maximum imposable term of imprisonment'' in Note 2; and by striking Note 6.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 1466 the following:

''18 U.S.C. § 1466A 2G2.2'';

in the line referenced to 18 U.S.C. § 2252 by striking '', 2G2.4'';

in the line referenced to 18 U.S.C. § 2252A by striking '', 2G2.4'';

by inserting before the line referenced to 18 U.S.C. § 2257 the following new line:

''18 U.S.C. § 2252B 2G3.1'';

and by striking the following: ''18 U.S.C. § 2260 2G2.1, 2G2.2'',

and inserting the following:

''18 U.S.C. § 2260(a) 2G2.1

18 U.S.C. § 2260(b) 2G2.2''.

Reason for Amendment: This amendment implements the directives to the Commission regarding child pornography and sexual abuse offenses in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, (the ''PROTECT Act''), Pub. L. 108–21. This amendment makes changes to Chapter Two, Part A (Criminal Sexual Abuse), Chapter Two, Part G (Offenses Involving Commercial Sex Acts, Sexual Exploitation of Minors, and Obscenity), §§ 3D1.2 (Groups of Closely Related Counts), 5B1.3 (Conditions of Probation), 5D1.2 (Term of Supervised Release), and 5D1.3 (Conditions of Supervised Release), and Appendix A (Statutory Index).

First, the amendment consolidates §§ 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a

Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic), and 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), into one guideline, § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct). Consolidation addresses concerns raised by judges, probation officers, prosecutors, and defense attorneys regarding difficulties in determining the appropriate guideline (§ 2G2.2 or § 2G2.4) for cases involving convictions of 18 U.S.C. § 2252 or § 2252A. Furthermore, as a result of amendments directed by the PROTECT Act, these guidelines have a number of similar specific offense characteristics.

Section 103 of the PROTECT Act established five-year mandatory minimum terms of imprisonment for offenses related to trafficking and receipt of child pornography under 18 U.S.C. §§ 2252(a)(1)–(3) and 2252A(a)(1), (2), (3), (4) and (6). This section also increased the statutory maximum terms of imprisonment for these offenses from 15 years to 20 years. Furthermore, the PROTECT Act increased the statutory maximum penalty for possession offenses from five to ten years. As a result of these new mandatory minimum penalties and the increases in the statutory maxima for these offenses, the Commission increased the base offense level for these offenses.

The amendment provides two alternative base offense levels depending upon the statute of conviction. The base offense level is set at level 18 for a defendant convicted of the possession of child pornography under 18 U.S.C. § 2252(a)(4), 18 U.S.C. § 2252A(a)(5), or 18 U.S.C. § 1466A(b), and at level 22 for a defendant convicted of any other offense referenced to this guideline, primarily trafficking and receipt of child pornography. The Commission determined that a base offense level of level 22 is appropriate for trafficking offenses because, when combined with several specific offense characteristics which are expected to apply in almost every case (*e.g.*, use of a computer, material involving children under 12 years of age, number of images), the mandatory minimum of 60 months' imprisonment will be reached or exceeded in almost every case by the Chapter Two calculations. The Commission increased the base offense level for possession offenses from level 15 to level 18 because of the increase in the statutory maximum term of imprisonment from 5 to 10 years, and to maintain proportionality with receipt and trafficking offenses. The amendment also provides a two-level decrease at § 2G2.2(b)(1) for a defendant whose base offense level is level 22, whose conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor, and whose conduct did not involve an intent to traffic in or distribute the material. Thus, individuals convicted of receipt of child pornography with no intent to traffic or distribute the material essentially will have an adjusted offense level of level 20, as opposed to an offense level of level 22, for receipt with intent to traffic, prior to application of any other specific offense characteristics. The Commission's review of these cases indicated the conduct involved in such ''simple receipt'' cases in most instances was indistinguishable from ''simple possession'' cases. The statutory penalties for ''simple receipt'' cases, however, are the same as the statutory penalties for trafficking cases. Reconciling these competing concerns, the Commission determined that a two-level reduction from the base offense level of level 22 is warranted, if the defendant establishes that there was no intent to distribute the material.

The amendment also provides a new, six-level enhancement at § 2G2.2(b)(3)(D) for offenses that involve distribution to a minor with intent to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than sexual activity.

The amendment also makes a number of changes to the commentary at § 2G2.2, as follows. The amendment adds several definitions, including definitions of ''computer,'' ''image,'' and ''interactive computer service,'' to provide greater guidance for these terms and uniformity in application of the guideline. The amendment also broadens the ''use of a computer'' enhancement at § 2G2.2(b)(5) in two ways. First, the amendment expands the enhancement to include an ''interactive computer service'' (*e.g.*, Internet access devices), as defined in 47 U.S.C. § 230(f)(2). The Commission concluded that the term ''computer'' did not capture all types of Internet devices. Thus, the amendment expands the definition of ''computer'' to include other devices that involve interactive computer services (*e.g.*, Web-Tv). In addition, the amendment broadens the enhancement by explicitly providing that the enhancement applies to offenses in which the computer or interactive computer service was used to obtain possession of child pornographic material. Prior to this amendment, the enhancement only applied if the computer was used for the transmission, receipt or distribution of the material.

The PROTECT Act directly amended §§ 2G2.2 and 2G2.4 to create a specific offense characteristic related to the number of child pornography images. That specific offense characteristic provides a graduated enhancement of two to five levels, depending on the number of images. However, the congressional amendment did not provide a definition of ''image,'' which raised questions regarding how to apply the specific offense characteristic. This amendment defines the term ''image'' and provides an instruction regarding how to apply the specific offense characteristic to videotapes. Application Note 4 states that an ''image'' means any visual depiction described in 18 U.S.C. § 2256(5) and (8) and instructs that each photograph, picture, computer or computer-generated image, or any similar visual depiction shall be considered one image. Furthermore, the application note provides that each video, video-clip, movie, or similar recording shall be considered to have 75 images for purposes of the specific offense characteristic. Application Note 4 also provides two possible grounds for an upward departure (if the number of images substantially under-represents the number of minors or if the length of the videotape or recording is substantially more than five minutes). Because the image specific offense characteristic created directly by Congress in the PROTECT Act essentially supercedes an earlier directive regarding a specific offense characteristic relating to the number of items (*see* Pub. L. 102–141 and Amendment 436), the Commission deleted the specific offense characteristic for possessing ten or more child pornographic items (formerly § 2G2.4(b)(3)). This deletion avoids potential litigation regarding issues of ''double counting'' if both specific offense characteristics were retained in the guideline.

In response to the increase in the use of undercover officers in child pornography investigations, the amendment expands the definition of ''minor.'' ''Minor'' is defined as (1) an

individual who had not attained the age of 18 years; (2) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (A) had not attained the age of 18 years, and (B) could be provided to a participant for the purposes of engaging in sexually explicit conduct; or (3) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

The amendment also makes clear that distribution includes advertising and posting material involving the sexual exploitation of a minor on a website for public viewing but does not include soliciting such material. In response to a circuit conflict, the amendment adds an application note to make clear that the specific offense characteristic for material portraying sadistic or masochistic conduct applies regardless of whether the defendant specifically intended to possess, receive, or distribute such material. The circuit courts have disagreed regarding whether a defendant must have specifically intended to receive the sadistic or masochistic images. Some circuit courts have required that the defendant must have intended to receive these images. *See United States* v. *Kimbrough,* 69 F.3d 723 (5th Cir. 1995); *United States* v. *Tucker,* 136 F.3d 763 (11th Cir. 1998). The Seventh Circuit has held that this specific offense characteristic is applied based on a strict liability standard, and that no proof of intent is necessary. *See United States* v. *Richardson,* 238 F.3d 837 (7th Cir. 2001). The Commission followed the Seventh Circuit's holding that the enhancement applies regardless of whether the defendant specifically intended to possess, receive, or distribute such material.

Second, section 103 of the PROTECT Act increased the mandatory minimum term of imprisonment from 10 to 15 years for offenses related to the production of child pornography under 18 U.S.C. § 2251. In response, the amendment increases the base offense level at § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) from level 27 to level 32. A base offense level of level 32 is appropriate for production offenses because, combined with the application of several specific offense characteristics that are expected to apply in almost all production cases (*e.g.*, age of the victim), this base offense level will ensure that the 15 year mandatory minimum (180 months) will be met in by the Chapter Two calculations almost every case.

The amendment adds three new specific offense characteristics that are associated with the production of child pornography. The amendment provides, at § 2G2.1(b)(2), a two-level increase if the offense involved the commission of a sex act or sexual contact, or a four-level increase if the offense involved a sex act and conduct described in 18 U.S.C. § 2241(a) or (b) (*i.e.*, the use of force was involved). The Commission concluded that this type of conduct is more serious than the production of a picture without a sex act or the use of force, and therefore, a two-or four-level increase is appropriate. The amendment also adds a two-level increase if the production offense also involved distribution. The Commission concluded that because traffickers sentenced at § 2G2.2 receive an increase for distributing images of child pornography, an individual who produces and distributes the image(s) also should be punished for distributing the item. Lastly, the amendment adds a new, four-level increase if the offense involved material portraying sadistic or masochistic conduct. Similar to the distribution specific offense characteristic, the Commission concluded that, because § 2G2.2 contains a four-level increase for possessing, receiving or trafficking these images, the producers of such images also should receive comparable additional punishment.

Third, this amendment creates a new guideline, § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), to specifically address offenses under chapter 117 of title 18, United States Code (Transportation for Illegal Sexual Activity and Related Crimes). Prior to the amendment, chapter 117 offenses, primarily 18 U.S.C. §§ 2422 (Coercion and Enticement) and 2423 (Transportation of Minors), were referenced by Appendix A (Statutory Index) to either § 2G1.1 or § 2A3.2. Offenses under 18 U.S.C. §§ 2422 and 2423(a) (Transportation with Intent to Engage in Criminal Sexual Activity) are referenced to § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct), but are then cross referenced from § 2G1.1 to § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) in order to account for certain underlying behavior. Application of this cross reference has led to confusion among courts and practitioners. Offenses under 18 U.S.C. § 2423(b) (Travel with Intent to Engage in Sexual Act with a Juvenile) are referenced to § 2A3.1, § 2A3.2, or § 2A3.3, but most are sentenced at § 2A3.2. Until recently, the majority of cases sentenced under § 2A3.2 were statutory rape cases that occurred on Federal property (*e.g.*, military bases) or Native American lands. In fiscal years 2001 and 2002, the majority of cases sentenced under the statutory rape guideline were coercion, travel, and transportation offenses. The creation of a new guideline for these cases is intended to address more appropriately the issues specific to these offenses. In addition, the removal of these cases from § 2A3.2 will permit the Commission to more appropriately tailor that guideline to actual statutory rape cases. Furthermore, travel and transportation cases have a different statutory penalty structure than § 2243(a) statutory rape cases.

Prior to the amendment, § 2A3.2 provided alternative base offense levels of (1) level 24 for a chapter 117 violation with a sexual act; (2) level 21 for a chapter 117 violation with no sexual act (*e.g.*, a sting case); or (3) level 18 for statutory rape with no travel. The PROTECT Act created a five year mandatory minimum term of imprisonment for 18 U.S.C. §§ 2422(a) and 2423(a) and increased the statutory maximum term of imprisonment for these offenses from 15 to 30 years. The PROTECT Act, however, did not increase the statutory maximum penalty, nor did the Act add a mandatory minimum, for 18 U.S.C. § 2243(a) offenses.

This new guideline has a base offense level of level 24 to account for the new mandatory minimum terms of imprisonment established by the PROTECT Act. The new guideline provides six specific offense characteristics to provide proportionate enhancements for aggravating conduct that may occur in connection with these cases. The guideline contains enhancements for commission of a sex act or commercial sex act, use of a computer, misrepresentations of identity, undue influence, custody issues, and involvement of a minor under the age of 12 years. The amendment also provides three cross references to account for certain more serious sexual abuse conduct, including a cross reference if the offense involved conduct described in 18 U.S.C. § 2241 or

§ 2242. Furthermore, the amendment makes conforming changes to § 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct) as a result of the creation of the new travel guideline. Section 2G1.1 is expected to apply primarily to adult prostitution cases because of the creation of § 2G1.3.

Fourth, section 521 of the PROTECT Act created a new offense at 18 U.S.C. § 2252B (Misleading Domain Names on the Internet). Section 2252B(a) prohibits the knowing use of a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity. Offenses under this subsection are punishable by a maximum term of imprisonment of two years. Section 2252B(b) prohibits the knowing use of a misleading domain name with the intent to deceive a minor into viewing material that is harmful to minors, with a maximum term of imprisonment of four years. The amendment refers the new offense to § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor), modifies the title of the guideline to include ''Misleading Domain Names'', and provides a two-level enhancement at § 2G3.1(b)(2), if ''the offense involved the use of a misleading domain name on the Internet with the intent to deceive a minor into viewing material on the Internet that is harmful to minors.'' In addition, the amendment also provides enhancements for the following conduct: (1) distribution to a minor that was intended to persuade, induce, entice, or coerce a minor to engage in any illegal activity; and (2) use of a computer or interactive computer service. Finally, the amendment adds § 2G3.1 to the list of guidelines at subsection (d) of § 3D1.2 (Groups of Closely Related Counts). Grouping multiple counts of these offenses pursuant to § 3D1.2(d) is appropriate because typically these offenses, as well as other pornography distribution offenses, are ongoing or continuous in nature. The amendment makes other minor technical changes to the commentary to make this guideline consistent with other Chapter Two, Part G guidelines.

Fifth, in response to a circuit conflict, this amendment adds a condition to §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release) permitting the court to limit the use of a computer or an interactive computer service for sex offenses in which the defendant used such items. The circuit courts have disagreed over imposition of restrictive computer use and Internet-access conditions. Some circuit courts have refused to allow complete prohibitions on computer use and Internet access (*see United States* v. *Sofsky,* 287 F.3d 122 (2nd Cir. 2002) (invalidating restrictions on computer use and Internet use); *United States* v. *Freeman,* 316 F.3d 386 (3d Cir. 2003) (same)), but other circuit courts have upheld restrictions on computer use and Internet access with probation officer permission (*see United States* v. *Fields,* 324 F.3d 1025 (8th Cir. 2003) (upholding condition prohibiting defendant from having Internet service in his home and allowing possessing of a computer only if granted permission by his probation officer); *United States* v. *Walser,* 275 F.3d 981 (10th Cir. 2001) (prohibiting Internet use but allowing Internet use with probation officer's permission); *United States* v. *Zinn,* 321 F.3d 1084 (11th Cir. 2003) (same)). Other courts have permitted a complete ban on a convicted sex offender's Internet use while on supervised release. *See United States* v. *Paul,* 274 F.3d 155 (5th Cir. 2001) (upholding complete ban on Internet use).

In addition, this amendment makes § 5D1.2 (Term of Supervised Release) consistent with changes made by the PROTECT Act regarding the applicable terms of supervised release under 18 U.S.C. § 3583 for sex offenders.

Sixth, section 401(i)(2) of the PROTECT Act directs the Commission to ''amend the Sentencing Guidelines to ensure that the Guidelines adequately reflect the seriousness of the offenses'' under sections 2243(b) (Sexual Abuse of a Ward), 2244(a)(4) (Abusive Sexual Contact), and 2244(b) (Sexual Contact with a Person without that Person's Permission) of title 18, United States Code. This amendment makes several amendments to the guidelines in Chapter Two, Part A (Criminal Sexual Abuse) to address this directive and to account for proportionality issues created by the increases in the Chapter Two, Part G guidelines. In addition, the amendment makes changes to the commentary to make the definitions in these guidelines consistent with definitions in the pornography guidelines.

Seventh, the amendment increases the base offense level at § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) from level 27 to level 30 to maintain proportionality between this guideline and § 2G2.1, the production of child pornography guideline, the base offense level of which was raised to level 32 by this amendment. Furthermore, the amendment adds the term ''interactive computer service'' to the computer enhancement in § 2A3.1.

Eighth, the amendment increases the offense levels for two specific offense characteristics at § 2A3.2. The amendment increases the custody, care, or supervisory control enhancement from two to four levels at § 2A3.2(b)(1), and changes § 2A3.2(b)(3), which involves the misrepresentation or undue influence by the defendant, from a two- to a four-level increase. The Commission concluded that an increase in the magnitude of these enhancements is appropriate because of the seriousness of such conduct. The amendment also deletes the alternative base offense level of level 21 or level 24 because these cases will be referenced to the new travel guideline at § 2G1.3.

Ninth, in response to section 401 of the PROTECT Act, the amendment increases the base offense level at § 2A3.3 (Criminal Sexual Abuse of a Ward) from level 9 to a level 12. Although 18 U.S.C. § 2243(b) offenses have only a one-year statutory maximum term of imprisonment, the Commission determined that these offenses were serious in nature and deserved punishment near that statutory maximum.

Finally, the amendment increases the alternative base offense levels in § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact) to level 20, 16, or 12, depending on the conduct involved in the offense. Prior to the amendment, these base offenses levels were level 16, 12, or 10. Base offense level 20 applies if the offense involved conduct described in 18 U.S.C. § 2241(a) or (b). Base offense level 16 applies if the offense involved conduct described in 18 U.S.C. § 2242, and base offense level 12 applies for all other cases sentenced at this guideline. The Commission concluded that these increases were appropriate to account for the serious conduct committed by the defendant and to maintain proportionality with other Chapter Two, Part A guidelines.

3. Amendment: Section 2B1.1(b) is amended by redesignating subdivisions (7) through (14) as subdivisions (8) through (15), respectively; and by inserting after subdivision (6) the following:

''(7) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1037; and (B) the offense involved obtaining electronic mail addresses through improper means, increase by 2 levels.''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by inserting ''1037,'' after ''1031,''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 4 by redesignating subdivisions (B)

and (C) as subdivisions (C) and (D), respectively; and by inserting after subdivision (A) the following:

''(B) Applicability to Transmission of Multiple Commercial Electronic Mail Messages.—For purposes of subsection (b)(2), an offense under 18 U.S.C. § 1037, or any other offense involving conduct described in 18 U.S.C. § 1037, shall be considered to have been committed through mass-marketing. Accordingly, the defendant shall receive at least a two-level enhancement under subsection (b)(2) and may, depending on the facts of the case, receive a greater enhancement under such subsection, if the defendant was convicted under, or the offense involved conduct described in, 18 U.S.C. § 1037.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by redesignating Notes 6 through 18 as Notes 7 through 19, respectively; and by inserting after Note 5 the following:

''6. Application of Subsection (b)(7).—For purposes of subsection (b)(7), 'improper means' includes the unauthorized harvesting of electronic mail addresses of users of a website, proprietary service, or other online public forum.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 1035 the following new line: ''18 U.S.C. § 1037 2B1.1''.

Reason for Amendment: This amendment responds to the directive in section 4(b) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act) of 2003, Pub. L. 108–187. The Act creates five new felony offenses codified at 18 U.S.C. § 1037 and directs the Commission to review and as appropriate amend the sentencing guidelines and policy statements to establish appropriate penalties for violations of 18 U.S.C. § 1037 and other offenses that may be facilitated by sending large volumes of unsolicited electronic mail, including fraud, identity theft, obscenity, child pornography and sexual exploitation of children. The Act also requires that the Commission consider providing sentencing enhancements for several factors, including defendants convicted under 18 U.S.C. § 1037 who obtained electronic mail addresses through improper means.

The amendment refers violations of subsections of 18 U.S.C. § 1037 to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The Commission determined that reference to § 2B1.1 is appropriate because subsection 18 U.S.C. § 1037(a)(1) involves misappropriation of another's computer, and 18 U.S.C. § 1037(a)(2) through (a)(5) involve deceit. Because each offense under 18 U.S.C. § 1037 contains as an element the transmission of multiple commercial electronic messages (where ''multiple'' is defined in the statute as ''more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period''), the amendment provides in Application Note 4 that the mass-marketing enhancement in § 2B1.1(b)(2)(A)(ii) shall apply automatically to any defendant who is convicted of 18 U.S.C. § 1037, or who committed an offense involving conduct described in 18 U.S.C. § 1037. Broadening application of the mass marketing enhancement to all defendants sentenced under § 2B1.1 whose offense involves conduct described in 18 U.S.C. § 1037, whether or not the defendant is convicted under 18 U.S.C. § 1037, responds specifically to that part of the directive concerning offenses that are facilitated by sending large volumes of electronic mail.

Additionally, in response to the directive, a new specific offense characteristic in § 2B1.1(b)(7) provides for a two-level increase if the defendant is convicted under 18 U.S.C. § 1037 and the offense involved obtaining electronic mail addressed through improper means. A corresponding application note provides a definition of ''improper means.'' Finally, the Commission also responded to the directive concerning other offenses by making several modifications to other guidelines, as set forth in Amendment 2 of this document. For example, an amendment to the obscenity guideline, § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor), added a two-level enhancement if the offense involved the use of a computer or interactive computer service.

4. *Amendment:* The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 15, as redesignated by Amendment 3 of this document, by adding at the end the following:

''For example, a state employee who improperly influenced the award of a contract and used the mails to commit the offense may be prosecuted under 18 U.S.C. § 1341 for fraud involving the deprivation of the intangible right of honest services. Such a case would be more aptly sentenced pursuant to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).''.

Chapter Two, Part C is amended by striking §§ 2C1.1 and 2C1.2 and their accompanying commentary and inserting the following:

''§ 2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions

(a) Base Offense Level:

(1) 14, if the defendant was a public official; or

(2) 12, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved more than one bribe or extortion, increase by 2 levels.

(2) If the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government from the offense, whichever is greatest, exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an elected public official or any public official in a high-level decision-making or sensitive position, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(4) If the defendant was a public official who facilitated (A) entry into the United States for a person, a vehicle, or cargo; (B) the obtaining of a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) the obtaining of a government identification document, increase by 2 levels.

(c) Cross References

(1) If the offense was committed for the purpose of facilitating the commission of another criminal offense, apply the offense guideline applicable to a conspiracy to commit that other offense, if the resulting offense level is greater than that determined above.

(2) If the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate,

in respect to that other offense, if the resulting offense level is greater than that determined above.

(3) If the offense involved a threat of physical injury or property destruction, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), if the resulting offense level is greater than that determined above.

(d) Special Instruction for Fines—Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the consequential damages resulting from the unlawful payment.

Commentary

Statutory Provisions: 15 U.S.C. §§ 78dd–1, 78dd–2, 78dd–3; 18 U.S.C. §§ 201(b)(1), (2), 371 (if conspiracy to defraud by interference with governmental functions), 872, 1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1951. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Definitions.—For purposes of this guideline:

''Government identification document'' means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

''Payment'' means anything of value. A payment need not be monetary.

''Public official'' shall be construed broadly and includes the following:

(A) ''Public official'' as defined in 18 U.S.C. § 201(a)(1).

(B) A member of a state or local legislature. ''State'' means a State of the United States, and any commonwealth, territory, or possession of the United States.

(C) An officer or employee or person acting for or on behalf of a state or local government, or any department, agency, or branch of government thereof, in any official function, under or by authority of such department, agency, or branch of government, or a juror in a state or local trial.

(D) Any person who has been selected to be a person described in subdivisions (A), (B), or (C), either before or after such person has qualified.

(E) An individual who, although not otherwise covered by subdivisions (A) through (D): (i) Is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government operations as to possess de facto authority to make governmental decisions (*e.g.*, which may include a leader of a state or local political party who acts in the manner described in this subdivision).

2. More than One Bribe or Extortion.—Subsection (b)(1) provides an adjustment for offenses involving more than one incident of either bribery or extortion. Related payments that, in essence, constitute a single incident of bribery or extortion (*e.g.*, a number of installment payments for a single action) are to be treated as a single bribe or extortion, even if charged in separate counts.

In a case involving more than one incident of bribery or extortion, the applicable amounts under subsection (b)(2) (*i.e.*, the greatest of the value of the payment, the benefit received or to be received, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government) are determined separately for each incident and then added together.

3. Application of Subsection (b)(2).—''Loss'', for purposes of subsection (b)(2)(A), shall be determined in accordance with Application Note 3 of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud). The value of 'the benefit received or to be received' means the net value of such benefit. Examples: (1) A government employee, in return for a $500 bribe, reduces the price of a piece of surplus property offered for sale by the government from $10,000 to $2,000; the value of the benefit received is $8,000. (2) A $150,000 contract on which $20,000 profit was made was awarded in return for a bribe; the value of the benefit received is $20,000. Do not deduct the value of the bribe itself in computing the value of the benefit received or to be received. In the preceding examples, therefore, the value of the benefit received would be the same regardless of the value of the bribe.

4. Application of Subsection (b)(3).—

(A) Definition.—''High-level decision-making or sensitive position'' means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.

(B) Examples.—Examples of a public official in a high-level decision-making position include a prosecuting attorney, a judge, an agency administrator, and any other public official with a similar level of authority. Examples of a public official who holds a sensitive position include a juror, a law enforcement officer, an election official, and any other similarly situated individual.

5. Application of Subsection (c).—For the purposes of determining whether to apply the cross references in this section, the ''resulting offense level'' means the final offense level (*i.e.*, the offense level determined by taking into account both the Chapter Two offense level and any applicable adjustments from Chapter Three, Parts A–D). *See* § 1B1.5(d); Application Note 2 of the Commentary to § 1B1.5 (Interpretation of References to Other Offense Guidelines).

6. Inapplicability of § 3B1.3.—Do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

7. Upward Departure Provisions.—In some cases the monetary value of the unlawful payment may not be known or may not adequately reflect the seriousness of the offense. For example, a small payment may be made in exchange for the falsification of inspection records for a shipment of defective parachutes or the destruction of evidence in a major narcotics case. In part, this issue is addressed by the enhancements in § 2C1.1(b)(2) and (c)(1), (2), and (3). However, in cases in which the seriousness of the offense is still not adequately reflected, an upward departure is warranted. *See* Chapter Five, Part K (Departures).

In a case in which the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. *See* § 5K2.7 (Disruption of Governmental Function).

Background: This section applies to a person who offers or gives a bribe for a corrupt purpose, such as inducing a public official to participate in a fraud or to influence such individual's official actions, or to a public official who solicits or accepts such a bribe.

The object and nature of a bribe may vary widely from case to case. In some cases, the object may be commercial advantage (*e.g.*, preferential treatment in the award of a government contract). In

others, the object may be issuance of a license to which the recipient is not entitled. In still others, the object may be the obstruction of justice. Consequently, a guideline for the offense must be designed to cover diverse situations.

In determining the net value of the benefit received or to be received, the value of the bribe is not deducted from the gross value of such benefit; the harm is the same regardless of value of the bribe paid to receive the benefit. In a case in which the value of the bribe exceeds the value of the benefit, or in which the value of the benefit cannot be determined, the value of the bribe is used because it is likely that the payer of such a bribe expected something in return that would be worth more than the value of the bribe. Moreover, for deterrence purposes, the punishment should be commensurate with the gain to the payer or the recipient of the bribe, whichever is greater.

Under § 2C1.1(b)(3), if the payment was for the purpose of influencing an official act by certain officials, the offense level is increased by 4 levels.

Under § 2C1.1(c)(1), if the payment was to facilitate the commission of another criminal offense, the guideline applicable to a conspiracy to commit that other offense will apply if the result is greater than that determined above. For example, if a bribe was given to a law enforcement officer to allow the smuggling of a quantity of cocaine, the guideline for conspiracy to import cocaine would be applied if it resulted in a greater offense level.

Under § 2C1.1(c)(2), if the payment was to conceal another criminal offense or obstruct justice in respect to another criminal offense, the guideline from § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate, will apply if the result is greater than that determined above. For example, if a bribe was given for the purpose of concealing the offense of espionage, the guideline for accessory after the fact to espionage would be applied.

Under § 2C1.1(c)(3), if the offense involved forcible extortion, the guideline from § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) will apply if the result is greater than that determined above.

Section 2C1.1 also applies to offenses under 15 U.S.C. §§ 78dd–1, 78dd–2, and 78dd–3. Such offenses generally involve a payment to a foreign public official, candidate for public office, or agent or intermediary, with the intent to influence an official act or decision of a foreign government or political party. Typically, a case prosecuted under these provisions will involve an intent to influence governmental action.

Section 2C1.1 also applies to fraud involving the deprivation of the intangible right to honest services of government officials under 18 U.S.C. §§ 1341–1343 and conspiracy to defraud by interference with governmental functions under 18 U.S.C. § 371. Such fraud offenses typically involve an improper use of government influence that harms the operation of government in a manner similar to bribery offenses.

Offenses involving attempted bribery are frequently not completed because the offense is reported to authorities or an individual involved in the offense is acting in an undercover capacity. Failure to complete the offense does not lessen the defendant's culpability in attempting to use public position for personal gain. Therefore, solicitations and attempts are treated as equivalent to the underlying offense.

§ 2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity

(a) Base Offense Level:

(1) 11, if the defendant was a public official; or

(2) 9, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved more than one gratuity, increase by 2 levels.

(2) If the value of the gratuity exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an elected public official or any public official in a high-level decision-making or sensitive position, increase by 4 levels. If the resulting offense level is less than level 15, increase to level 15.

(4) If the defendant was a public official who facilitated (A) entry into the United States for a person, a vehicle, or cargo; (B) the obtaining of a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) the obtaining of a government identification document, increase by 2 levels.

(c) Special Instruction for Fines—Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the value of the unlawful payment.

Commentary

Statutory Provisions: 18 U.S.C. §§ 201(c)(1), 212–214, 217. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. Definitions.—For purposes of this guideline:

''Government identification document'' means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

''Public official'' shall be construed broadly and includes the following:

(A) ''Public official'' as defined in 18 U.S.C. § 201(a)(1).

(B) A member of a state or local legislature.

(C) An officer or employee or person acting for or on behalf of a state or local government, or any department, agency, or branch of government thereof, in any official function, under or by authority of such department, agency, or branch of government, or a juror.

(D) Any person who has been selected to be a person described in subdivisions (A), (B), or (C), either before or after such person has qualified.

(E) An individual who, although not otherwise covered by subdivisions (A) through (D): (i) is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government operations as to possess de facto authority to make governmental decisions (*e.g.*, which may include a leader of a state or local political party who acts in the manner described in this subdivision).

2. Application of Subsection (b)(1).—Related payments that, in essence, constitute a single gratuity (*e.g.*, separate payments for airfare and hotel for a single vacation trip) are to be treated as a single gratuity, even if charged in separate counts.

3. Application of Subsection (b)(3).—

(A) Definition.—''High-level decision-making or sensitive position'' means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decisionmaking process.

(B) Examples.—Examples of a public official in a high-level decisionmaking position include a prosecuting attorney, a judge, an agency administrator, a law enforcement officer, and any other public official with a similar level of authority. Examples of a public official who holds a sensitive position include a juror, a law enforcement officer, an election official, and any other similarly situated individual.

4. Inapplicability of § 3B1.3.—Do not apply the adjustment in § 3B1.3 (Abuse of Position or Trust or Use of Special Skill).

Background: This section applies to the offering, giving, soliciting, or receiving of a gratuity to a public official in respect to an official act. It also applies in cases involving (1) the offer to, or acceptance by, a bank examiner of a loan or gratuity; (2) the offer or receipt of anything of value for procuring a loan or discount of commercial bank paper from a Federal Reserve Bank; and (3) the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.''.

Chapter Two, Part C, Subpart 1, is amended by striking §§ 2C1.6 and 2C1.7 and their accompanying commentary.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 209 by striking ''2C1.4'' and inserting ''2C1.3'';

In the line referenced to 18 U.S.C. § 212 by striking ''2C1.6'' and inserting ''2C1.2'';

In the line referenced to 18 U.S.C. § 213 by striking ''2C1.6'' and inserting ''2C1.2'';

In the line referenced to 18 U.S.C. § 214 by striking ''2C1.6'' and inserting ''2C1.2'';

In the line referenced to 18 U.S.C. § 217 by striking ''2C1.6'' and inserting ''2C1.2'';

In the line referenced to 18 U.S.C. § 371 by striking ''2C1.7'' and inserting ''2C1.1 (if conspiracy to defraud by interference with governmental functions)''; and by striking ''924(c)'' and inserting ''924(c))'';

In the line referenced to 18 U.S.C. § 1341 by striking ''2C1.7'' and inserting ''2C1.1'';

In the line referenced to 18 U.S.C. § 1342 by striking ''2C1.7'' and inserting ''2C1.1'';

In the line referenced to 18 U.S.C. § 1343 by striking ''2C1.7'' and inserting ''2C1.1'';

In the line referenced to 18 U.S.C. § 1909 by striking '', 2C1.4''; and

In the line referenced to 41 U.S.C. § 423(e) by striking '', 2C1.7''.

Reason for Amendment: This amendment increases punishment for bribery, gratuity, and ''honest services'' cases while providing additional enhancements to address previously unrecognized aggravating factors inherent in some of these offenses. This amendment reflects the Commission's conclusion that, in general, public corruption offenses previously did not receive punishment commensurate with the gravity of such offenses. The amendment also ensures that punishment levels for public corruption offenses remain proportionate to those for closely analogous offenses sentenced under § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) and § 2J1.2 (Obstruction of Justice). To simplify guideline application, this amendment also consolidates § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) with § 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) and consolidates § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) with § 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper).

Sections 2C1.1 and 2C1.2 each are amended to include alternative base offense levels, with an increase of two levels for public official defendants who violate their offices or responsibilities by accepting bribes, gratuities, or anything else of value. The higher alternative base offense levels for public officials reflect the Commission's view that offenders who abuse their positions of public trust are inherently more culpable than those who seek to corrupt them, and their offenses present a somewhat greater threat to the integrity of governmental processes.

A specific offense characteristic in the former §§ 2C1.1, 2C1.2, and 2C1.7 that raised offense levels incrementally with the financial magnitude of the offense or, if greater, by eight levels for the defendant's status as a ''high-level decision-maker'' is replaced by two separate specific offense characteristics in the amended guidelines. These new specific offense characteristics for ''loss'' and ''status'' are to be applied cumulatively when they both co-exist in the case. Their operation in tandem ensures that the offense level will always rise commensurate with the financial magnitude of the offense, and that all offenses involving ''an elected public official or any public official in a high-level decision-making or sensitive position'' will receive four additional offense levels and, when applicable, a minimum offense level of level 18 (in § 2C1.1) or level 15 (in § 2C1.2). The minimum offense level ensures that an offender sentenced under the amended guidelines will not receive a less severe sentence than a similarly situated offender under the former guidelines. Application notes and illustrative examples have been added to the amended guidelines to clarify the meaning of ''high-level decision-making or sensitive position.''

A new specific offense characteristic has been added to §§ 2C1.1 and 2C1.2 that provides two additional offense levels when the offender is a public official whose position involves the security of the borders of the United States or the integrity of the process for generating documents related to naturalization, legal entry, legal residence, or other government identification documents. This specific offense characteristic recognizes the extreme sensitivity of these positions in light of heightened threats from international terrorism.

5. *Amendment:* Section 2D1.1(b) is amended by redesignating subdivisions (5) and (6) as subdivisions (6) and (7), respectively; and by inserting after subdivision (4) the following:

''(5) If the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by 2 levels.''.

Section 2D1.1 is amended by adding after subsection (d) the following:

''(e) Special Instruction

(1) If (A) subsection (d)(2) does not apply; and (B) the defendant committed, or attempted to commit, a sexual offense against another individual by distributing, with or without that individual's knowledge, a controlled substance to that individual, an adjustment under § 3A1.1(b)(1) shall apply.''.

Section 2D1.1(c) is amended in subdivision (10) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following: ''40,000 or more units of Schedule III substances;'';

In subdivision (11) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following: ''At least 20,000 but less than 40,000 units of Schedule III substances;'';

In subdivision (12) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following: ''At least 10,000 but less than 20,000 units of Schedule III substances;'';

In subdivision (13) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following: ''At least 5,000 but less than 10,000 units of Schedule III substances;'';

In subdivision (14) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after

the thirteenth entry the following: ''At least 2,500 but less than 5,000 units of Schedule III substances;'';

In subdivision (15) by striking ''or Schedule III substances'' in the fourth entry; and by inserting after the fourth entry the following: ''At least 1,000 but less than 2,500 units of Schedule III substances;'';

In subdivision (16) by striking ''or Schedule III substances'' in the fourth entry; and by inserting after the fourth entry the following: ''At least 250 but less than 1,000 units of Schedule III substances;''; and

In subdivision (17) by striking ''or Schedule III substances'' in the fourth entry; and by inserting after the fourth entry the following: ''Less than 250 units of Schedule III substances;''.

Section 2D1.1 is amended in the subdivision captioned ''*Notes to Drug Quantity Table'' in Note (F) in the first sentence by inserting ''(except gamma-hydroxybutyric acid)'' after ''Depressants''; and in the second sentence by inserting ''(except gamma-hydroxybutyric acid)'' after ''substance'', and by striking ''gm'' and inserting ''ml''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by striking Note 5 and inserting the following:

''5. Analogues and Controlled Substances Not Referenced in this Guideline.—Any reference to a particular controlled substance in these guidelines includes all salts, isomers, all salts of isomers, and, except as otherwise provided, any analogue of that controlled substance. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed. For purposes of this guideline 'analogue' has the meaning given the term 'controlled substance analogue' in 21 U.S.C. § 802(32). In determining the appropriate sentence, the court also may consider whether a greater quantity of the analogue is needed to produce a substantially similar effect on the central nervous system as the controlled substance for which it is an analogue.

In the case of a controlled substance that is not specifically referenced in this guideline, determine the base offense level using the marihuana equivalency of the most closely related controlled substance referenced in this guideline. In determining the most closely related controlled substance, the court shall, to the extent practicable, consider the following:

(A) Whether the controlled substance not referenced in this guideline has a chemical structure that is substantially similar to a controlled substance referenced in this guideline.

(B) Whether the controlled substance not referenced in this guideline has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance referenced in this guideline.

(C) Whether a lesser or greater quantity of the controlled substance not referenced in this guideline is needed to produce a substantially similar effect on the central nervous system as a controlled substance referenced in this guideline.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Tables by striking the subdivision captioned ''Schedule I or II Depressants'' and inserting the following new subdivisions:

''Schedule I or II Depressants (except gamma-hydroxybutyric acid): 1 unit of a Schedule I or II Depressant (except gamma-hydroxybutyric acid) = 1 gm of marihuana.

Gamma-hydroxybutyric Acid: 1 ml of gamma-hydroxybutyric acid = 8.8 gm of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 12 by striking the last sentence of the third paragraph and inserting the following:

''If, however, the defendant establishes that the defendant did not intend to provide or purchase, or was not reasonably capable of providing or purchasing, the agreed-upon quantity of the controlled substance, the court shall exclude from the offense level determination the amount of controlled substance that the defendant establishes that the defendant did not intend to provide or purchase or was not reasonably capable of providing or purchasing.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''22. Application of Subsection (b)(5).—For purposes of subsection (b)(5), 'mass-marketing by means of an interactive computer service' means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(5) would apply to a defendant who operated a web site to promote the sale of Gamma-hydroxybutyric Acid (GHB) but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. 'Interactive computer service', for purposes of subsection (b)(5) and this note, has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

''23. Application of Subsection (e)(1).—

''(A) Definition.—For purposes of this guideline, 'sexual offense' means a 'sexual act' or 'sexual contact' as those terms are defined in 18 U.S.C. § 2246(2) and (3), respectively.

(B) Upward Departure Provision.—If the defendant committed a sexual offense against more than one individual, an upward departure would be warranted.''.

Section 2D1.11(b)(2) is amended by striking ''21 U.S.C. §§ 841(d)(2), (g)(1), or 960(d)(2),'' and inserting ''21 U.S.C. § 841(c)(2) or (f)(1), or § 960(d)(2), (d)(3), or (d)(4),''.

Section 2D1.11(b) is amended by adding at the end the following:

''(4) If the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), distributed a listed chemical through mass-marketing by means of an interactive computer service, increase by 2 levels.''.

Section 2D1.11(e) is amended in subdivision (1) by striking ''10,000 KG or more of Gamma-butyrolactone;'' and inserting ''2271 L or more of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (2) by striking ''At least 3,000 KG but less than 10,000 KG of Gamma-butyrolactone;'' and inserting ''At least 681.3 L but less than 2271 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (3) by striking ''At least 1,000 KG but less than 3,000 KG of Gamma-butyrolactone;'' and inserting ''At least 227.1 L but less than 681.3 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (4) by striking ''At least 700 KG but less than 1,000 KG of Gamma-butyrolactone;'' and inserting ''At least 159 L but less than 227.1 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (5) by striking ''At least 400 KG but less than 700 KG of Gamma-butyrolactone;'' and inserting ''At least 90.8 L but less than 159 L of Gamma-

butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (6) by striking ''At least 100 KG but less than 400 KG of Gamma-butyrolactone;'' and inserting ''At least 22.7 L but less than 90.8 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (7) by striking ''At least 80 KG but less than 100 KG of Gamma-butyrolactone;'' and inserting ''At least 18.2 L but less than 22.7 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (8) by striking ''At least 60 KG but less than 80 KG of Gamma-butyrolactone;'' and inserting ''At least 13.6 L but less than 18.2 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

In subdivision (9) by striking ''At least 40 KG but less than 60 KG of Gamma-butyrolactone;'' and inserting ''At least 9.1 L but less than 13.6 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus''; and

In subdivision (10) by striking ''Less than 40 KG of Gamma-butyrolactone;'' and inserting ''Less than 9.1 L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus''.

The Commentary to § 2D1.11 captioned ''Statutory Provisions'' is amended by inserting '', (3), (4)'' after ''(d)(1), (2)''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 5 by striking ''21 U.S.C. §§ 841(d)(2), (g)(1), and 960(d)(2)'' and inserting ''21 U.S.C. §§ 841(c)(2) and (f)(1), and 960(d)(2), (d)(3), and (d)(4)''; and by striking ''Where'' and inserting ''In a case in which''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended by adding at the end the following:

''7. Application of Subsection (b)(4).—For purposes of subsection (b)(4), 'mass-marketing by means of an interactive computer service' means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(4) would apply to a defendant who operated a web site to promote the sale of Gamma-butyrolactone (GBL) but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. 'Interactive computer service', for purposes of subsection (b)(4) and this note, has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).''.

Section 2D1.12(b) is amended by adding at the end the following:

''(3) If the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), distributed any prohibited flask, equipment, chemical, product, or material through mass-marketing by means of an interactive computer service, increase by 2 levels.

(4) If the offense involved stealing anhydrous ammonia or transporting stolen anhydrous ammonia, increase by 6 levels.''.

The Commentary to § 2D1.12 captioned ''Application Notes'' is amended by adding at the end the following:

''4. Application of Subsection (b)(3).—For purposes of subsection (b)(3), 'mass-marketing by means of an interactive computer service' means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(3) would apply to a defendant who operated a web site to promote the sale of prohibited flasks but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. 'Interactive computer service', for purposes of subsection (b)(3) and this note, has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).''.

Appendix A (Statutory Index) is amended by striking the following: ''21 U.S.C. § 957 2D1.1''.

Reason for Amendment: This amendment makes several modifications to the guidelines in Chapter Two, Part D (Offenses Involving Drugs). First, this amendment implements section 608 of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, (the ''PROTECT Act''), Pub. L. 108–21, which directs the Commission to review and consider amending the guidelines with respect to gamma-hydroxybutyric acid (GHB) to provide increased penalties that reflect the seriousness of offenses involving GHB and the need to deter them. The Commission identified several harms associated with GHB offenses and separately increased penalties for Internet trafficking and drug facilitated sexual assault, two harms associated with trafficking and use of this and other controlled substances. Specifically, the amendment modifies § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to provide an approximate five-year term of imprisonment (equivalent to base offense level 26, Criminal History Category I) for distribution of three gallons of GHB. The Commission determined, based on information provided by the Drug Enforcement Administration, that this quantity typically reflects a mid-level distributor. The trigger for the ten-year penalty (base offense level 32) is set at 30 gallons, reflecting quantities associated with a high-level distributor. This amendment also increases the penalties under § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) for offenses involving gamma-butyrolactone (GBL), a precursor for GHB. The quantities in § 2D1.11 track the quantities used in § 2D1.1.

Second, this amendment adds a two-level enhancement in §§ 2D1.1, 2D1.11, and 2D1.12 (Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material; Attempt or Conspiracy) for mass marketing of a controlled substance, listed chemical, or prohibited equipment, respectively, through the use of an interactive computer service. The Commission identified use of an interactive computer service as a tool providing easier access to illegal products. Use of an interactive computer service enables drug traffickers to market their illegal products more efficiently and anonymously to a wider audience than through traditional drug trafficking means, while making it more difficult for law enforcement authorities to discover the offense and apprehend the offenders.

Third, this amendment provides a special instruction in § 2D1.1(e) that requires application of the vulnerable victim adjustment in § 3A1.1(b)(1) (Hate Crime Motivation or Vulnerable Victim) if the defendant commits a sexual offense by distributing a controlled substance to another individual, with or without that individual's knowledge. The amendment addresses cases in which the cross reference in

§ 2D1.1(d)(2) does not apply. The cross reference in § 2D1.1(d)(2) is limited to cases involving a conviction under 21 U.S.C. § 841(b)(7), which prescribes a 20-year statutory maximum penalty for the distribution of a controlled substance to another individual, without that individual's knowledge, with the intent to commit a crime of violence (including rape). Because the statute requires that the distribution occur without knowledge, the cross reference does not apply to drug facilitated sexual assaults when the victim of the sexual assault knowingly ingests the controlled substance. This amendment reflects the Commission's view that a defendant who commits a drug-facilitated sexual assault should receive increased punishment whether or not the victim knowingly ingested the controlled substance distributed by the defendant.

Fourth, this amendment modifies the existing rule at Application Note 5 of § 2D1.1 to provide a uniform mechanism for determining sentences in cases involving analogues of controlled substances or controlled substances not specifically referenced in this guideline. The genesis of this amendment was the Commission's investigation of GHB, during which the Commission learned that analogues of GHB, specifically GBL and 1,4 Butanediol (BD), among others, often are used in its stead and cause the same effects as GHB. The Commission was concerned that analogues of other drugs might be similarly used. Additionally, the Commission became aware that courts employ a variety of means to determine the applicable guideline range for defendants charged with offenses involving controlled substances not specifically referenced in § 2D1.1, resulting in disparate sentences. The purpose of the amendment is to provide a more uniform mechanism for determining sentences in cases involving analogues or controlled substances not specifically referenced in this guideline.

Fifth, this amendment corrects a technical error in the Drug Quantity Table at § 2D1.1(c) with respect to Schedule III substances. Specifically, the maximum base offense level for Schedule III substances is level 20, but prior to the amendment there was no corresponding language in the Drug Quantity Table to so indicate.

Sixth, this amendment addresses a circuit conflict regarding the interpretation of the last sentence in Application Note 12 of § 2D1.1. *See United States* v. *Smack,* 347 F.3d 533 (3rd Cir. 2003) (criticizing language of note); *compare United States* v. *Gomez,* 103 F.3d 249, 252–53 (2d Cir. 1997) (holding that the last sentence of the note is intended to apply only to sellers); *United States* v. *Perez de Dios,* 237 F.3d 1192 (10th Cir. 2001) (same); *United States* v. *Brassard,* 212 F.3d 54, 58 (1st Cir. 2000) (same), *with United States* v. *Minore,* 40 Fed. Appx. 536, 537 (9th Cir. 2002) (mem.op.) (applying the final sentence of the new Note 12 to a buyer in reverse sting operation); *United States* v. *Estrada,* 256 F.3d 466, 476 (7th Cir. 2001) (same). Application Note 12 covers offenses involving an agreement to sell a specific quantity of a controlled substance. This amendment makes clear that the court shall exclude from the offense level determination the amount of the controlled substance, if any, that the defendant establishes that he or she did not intend to provide or purchase, or was not reasonably capable of providing or purchasing, regardless of whether the defendant agreed to be the seller or the buyer of the controlled substance.

Seventh, this amendment updates the statutory references in § 2D1.11(b)(2) and accompanying commentary to conform to statutory redesignations of certain offenses, and also expands application of § 2D1.11(b)(2) to include 21 U.S.C. § 960(d)(3) and (d)(4) among the statutes of conviction for which the three-level reduction at subsection (b)(2) is available. The reduction formerly applied in cases in which the defendant, convicted under 21 U.S.C. § 841(c)(2), (f)(1), or § 960(d)(2), as properly redesignated, did not have knowledge or actual belief that the listed chemical would be used to manufacture a controlled substance. Section 841(c)(2) of title 21, United States Code, requires a finding of either knowledge or a reasonable cause to believe that the listed chemical would be used to manufacture a controlled substance. Sections 960(d)(3) and (d)(4) of title 21, United States Code, similarly require a finding that a person who imports, exports, or serves as a broker for, a listed chemical knows or has a reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance. Given that the reduction applies in 21 U.S.C. § 841(c)(2) cases in which the defendant had a reasonable cause to believe, but not knowledge or actual belief, that the listed chemical would be used to manufacture a controlled substance, and the mens rea in 21 U.S.C. § 841(c)(2) is the same as in 21 U.S.C. § 960(d)(3) and (d)(4), the amendment adds 21 U.S.C. § 960(d)(3) and (d)(4) to § 2D1.11(b)(2).

Eighth, this amendment adds white phosphorus and hypophosphorous acid to the Chemical Quantity Table in § 2D1.11(e). Both substances are List I chemicals that can be substituted for red phosphorus in the manufacture of methamphetamine. Red phosphorus was added to the Chemical Quantity Table effective November 1, 2003 (*see* Amendment 661), but notice and comment requirements prevented white phosphorus and hypophosphorous acid from being added contemporaneously.

Ninth, this amendment provides an enhancement of six levels at § 2D1.12 if the offense involved stealing anhydrous ammonia or transporting stolen anhydrous ammonia. A widely used source of nitrogen fertilizer for crops, anhydrous ammonia also is used in the manufacture of methamphetamine. Anhydrous ammonia must be stored and handled under high pressure, which requires specially designed and well-maintained equipment. The improper handling and storage of anhydrous ammonia can result in permanent injury (such as cell destruction and severe chemical burns) and explosions. Methamphetamine manufacturers often obtain anhydrous ammonia by siphoning large-volume tanks at fertilizer plants and farms, and rarely have the knowledge or equipment required to properly handle it. This enhancement accounts for the inherent dangers created by such conduct, as well as the likely intended unlawful use.

Finally, this amendment modifies Appendix A (Statutory Index) by deleting the reference to 21 U.S.C. § 957, which is not a substantive criminal offense, but rather a registration provision for which violations are prosecuted under 21 U.S.C. § 960(a) or (b) (for controlled substances) or § 960(d)(6) (for listed chemicals).

6. *Amendment:* Section 2D1.1(a) is amended by striking subdivision (3) and inserting the following:

''(3) The offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels.''.

Section 2D1.11 is amended by striking subsection (a) and inserting the following:

''(a) Base Offense Level: The offense level from the Chemical Quantity Table set forth in subsection (d) or (e), as appropriate, except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (e) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels.''.

Reason for Amendment: The amendment modifies the maximum base offense level for certain offenders provided at § 2D1.1(a)(3) (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). Prior to the amendment, subsection (a)(3) limited the maximum base offense level to level 30 for all offenders sentenced under § 2D1.1 who also received an adjustment under § 3B1.2 (Mitigating Role). In order to address proportionality concerns arising from the ''mitigating role cap,'' the amendment modifies § 2D1.1(a)(3) to provide a graduated reduction for offenders whose quantity level under § 2D1.1(c) results in a base offense level greater than level 30 and who qualify for a mitigating role adjustment under § 3B1.2. Specifically, the amendment provides a two-level reduction if the defendant receives an adjustment under § 3B1.2 and the base offense level determined at the Drug Quantity Table in § 2D1.1 is level 32. If the base offense level determined at § 2D1.1(c) is level 34 or 36, and the defendant receives an adjustment under § 3B1.2, a three-level reduction is provided. A four-level reduction is provided if the defendant receives an adjustment under § 3B1.2 and the base offense level under § 2D1.1(c) is level 38. This amendment also provides an identical reduction in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy).

7. *Amendment:* Section 2K2.1(b) is amended by striking subdivision (3) and inserting the following:

''(3) If the offense involved—

(A) A destructive device that is a portable rocket, a missile, or a device for use in launching a portable rocket or a missile, increase by 15 levels; or

(B) A destructive device other than a destructive device referred to in subdivision (A), increase by 2 levels.''.

Section 2K2.1(b) is amended by striking the paragraph that begins ''Provided, that the'' and inserting the following:

''The cumulative offense level determined from the application of subsections (b)(1) through (b)(4) may not exceed level 29, except if subsection (b)(3)(A) applies.''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by striking Notes 1 through 4; and by redesignating Note 5 as Note 1.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 1, as redesignated by this amendment, by inserting Definitions.—''before ''For purposes of this guideline:''; by inserting before '' 'Controlled substance offense' '' the following paragraph: '' 'Ammunition' has the meaning given that term in 18 U.S.C. § 921(a)(17)(A).'';

By inserting after the paragraph that begins '' 'Crime of violence' '' the following paragraph: '' 'Destructive device' has the meaning given that term in 26 U.S.C. § 5845(f).'';

And by adding at the end, the following paragraph: '' 'Firearm' has the meaning given that term in 18 U.S.C. § 921(a)(3).''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by inserting after Note 1, as redesignated by this amendment, the following:

''2. Firearm Described in 18 U.S.C. § 921(a)(30).—For purposes of subsection (a), a 'firearm described in 18 U.S.C. § 921(a)(30)' (pertaining to semiautomatic assault weapons) does not include a weapon exempted under the provisions of 18 U.S.C. § 922(v)(3).''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by redesignating Notes 6 through 19 as Notes 3 through 16, respectively.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 8, as redesignated by this amendment, by striking ''a two-level'' and inserting ''the applicable''; and by adding at the end the following paragraph:

''Offenses involving such devices cover a wide range of offense conduct and involve different degrees of risk to the public welfare depending on the type of destructive device involved and the location or manner in which that destructive device was possessed or transported. For example, a pipe bomb in a populated train station creates a substantially greater risk to the public welfare, and a substantially greater risk of death or serious bodily injury, than an incendiary device in an isolated area. In a case in which the cumulative result of the increased base offense level and the enhancement under subsection (b)(3) does not adequately capture the seriousness of the offense because of the type of destructive device involved, the risk to the public welfare, or the risk of death or serious bodily injury that the destructive device created, an upward departure may be warranted. *See also,* §§ 5K2.1 (Death), 5K2.2 (Physical Injury), and 5K2.14 (Public Welfare).''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 13, as redesignated by this amendment, by inserting ''(*see* Application Note 8)'' after ''multiple individuals''.

Section 2X1.1 is amended by striking subsection (d) and inserting the following:

''(d) Special Instruction

(1) Subsection (b) shall not apply to:

(A) Any of the following offenses, if such offense involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. § 2332b(g)(5): 18 U.S.C. § 81; 18 U.S.C. § 930(c); 18 U.S.C. § 1362; 18 U.S.C. § 1363; 18 U.S.C. § 1992; 18 U.S.C. § 2339A; 18 U.S.C. § 2340A; 49 U.S.C. § 46504; 49 U.S.C. § 46505; and 49 U.S.C. § 60123(b).

(B) Any of the following offenses: 18 U.S.C. § 32; 18 U.S.C. § 1993; and 18 U.S.C. § 2332a.''.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 1993(a)(8) by inserting ''2A5.2 (if attempt or conspiracy to commit 18 U.S.C. § 1993(a)(4), (a)(5), or (a)(6)),'' before ''2A6.1''.

Reason for Amendment: Before promulgation of this amendment, subsection (b)(3) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) generally provided a two-level enhancement if the offense involved a destructive device, without regard to the type of destructive device involved. This amendment increases that enhancement to 15 levels if the destructive device was a man-portable air defense system (MANPADS), portable rocket, missile, or device used for launching a portable rocket or missile. It maintains the two-level enhancement for all other destructive devices. MANPADS and similar weapons are highly regulated under chapter 53 of title 26, United States Code, and chapter 44 of title 18, United States Code, and are classified as ''destructive devices'' under 26 U.S.C. § 5845(f).

This amendment responds to concerns that these types of weapons, which have been used overseas, have the ability to inflict death or injury on large numbers of persons if fired at an aircraft, train, building, or similar target. Because of the inherent risks of such weapons and the fact that there is no legitimate reason to possess them, the Commission determined that the statutory maximum penalty for possession of such devices should apply in all such offenses, even after possible application of acceptance of responsibility. The amendment also re-designates Application Note 11 as Application Note 8, and adds an invited upward departure for non-MANPADS destructive devices in a case in which the two-level enhancement for such devices does not adequately capture the

seriousness of the offense because of the type of destructive device involved, the risk to public welfare, and the risk of death or serious bodily injury that the destructive device created. Furthermore, in response to concerns that it is unclear whether certain types of firearms qualify as ''destructive devices'' using the guideline definition of ''destructive device,'' the amendment adopts the statutory definition provided in 26 U.S.C. § 5845(f). For consistency, similar statutory definitions are substituted for the definitions of ''ammunition'' and ''firearm.''

The amendment also increases guideline penalties for attempts and conspiracies to commit certain offenses if those offenses involved the use of a MANPADS or similar destructive device. Affected offenses include 18 U.S.C. § 32 (Destruction of aircraft or aircraft facilities), 18 U.S.C. § 1993 (Terrorist attacks and other acts of violence against mass transportation systems), and 18 U.S.C. § 2332a (Use of certain weapons of mass destruction). The Commission amended the special instruction in subsection (d) of § 2X1.1 (Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)) to prohibit application of the three-level reduction for attempts and conspiracies for these offenses generally, and not just in the context of the use of a MANPADS or similar destructive device.

Finally, the amendment modifies the Statutory Index (Appendix A) reference for convictions under 18 U.S.C. § 1993(a)(8), relating to attempts, threats, or conspiracies to commit any of the substantive terrorist offenses in 18 U.S.C. § 1993(a). Under this amendment, these offenses will be referred to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or Ferry) rather than § 2A6.1 (Threatening or Harassing Communications).

8. *Amendment:* Chapter Two, Part K, Subpart 2, is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2K2.6. Possessing, Purchasing, or Owning Body Armor by Violent Felons

(a) Base Offense Level: 10

(b) Specific Offense Characteristic

(1) If the defendant used the body armor in connection with another felony offense, increase by 4 levels.

Commentary

Statutory Provision: 18 U.S.C. § 931.

Application Notes:

1. Application of Subsection (b)(1).—

(A) Meaning of ''Defendant''.—Consistent with § 1B1.3 (Relevant Conduct), the term 'defendant', for purposes of subsection (b)(1), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(B) Meaning of ''Felony Offense''.—For purposes of subsection (b)(1), 'felony offense' means any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.

(C) Meaning of ''Used''.—For purposes of subsection (b)(1), 'used' means the body armor was (i) actively employed in a manner to protect the person from gunfire; or (ii) used as a means of bartering. Subsection (b)(1) does not apply if the body armor was merely possessed. For example, subsection (b)(1) would not apply if the body armor was found in the trunk of a car but was not being actively used as protection.

2. Inapplicability of § 3B1.5.—If subsection (b)(1) applies, do not apply the adjustment in § 3B1.5 (Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence).

3. Grouping of Multiple Counts.—If subsection (b)(1) applies (because the defendant used the body armor in connection with another felony offense) and the instant offense of conviction includes a count of conviction for that other felony offense, the counts of conviction for the 18 U.S.C. § 931 offense and that other felony offense shall be grouped pursuant to subsection (c) of § 3D1.2 (Groups of Closely Related Counts).''.

The Commentary to § 3B1.5 captioned ''Application Notes'' is amended by adding at the end the following:

''3. Interaction with § 2K2.6 and Other Counts of Conviction.—If the defendant is convicted only of 18 U.S.C. § 931 and receives an enhancement under subsection (b)(1) of § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons), do not apply an adjustment under this guideline. However, if, in addition to the count of conviction under 18 U.S.C. § 931, the defendant (A) is convicted of an offense that is a drug trafficking crime or a crime of violence; and (B) used the body armor with respect to that offense, an adjustment under this guideline shall apply with respect to that offense.''.

Reason for Amendment: This amendment addresses the new offense at 18 U.S.C. § 931, which was created by section 11009 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273. Section 931 of title 18, United States Code, prohibits the purchase, ownership, or possession of body armor by individuals who have been convicted of either a federal or state felony that is a crime of violence. The statutory maximum term of imprisonment for 18 U.S.C. § 931 is three years.

This amendment creates a new guideline at § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) because there is no guideline that covers conduct sufficiently analogous to the conduct constituting a violation of 18 U.S.C. § 931.

The new guideline provides a base offense level of 10 because 18 U.S.C. § 931 offenses have lesser statutory maximum punishments than offenses involving weapon possession and trafficking. Those offenses, which are sentenced at § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), have a base offense level of 12 if there is no aggravating circumstance present in the case.

The new guideline provides a four-level increase at § 2K2.6(b)(1) ''[i]f the defendant used the body armor in connection with another felony offense'' because violations in which the body armor was used in connection with another felony offense are more serious than those involving only possession, purchase, or ownership of body armor. ''Felony offense'' is defined as ''any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year'' and does not require that a charge be brought or a conviction sustained.

The commentary also provides guidance for the scope of the terms ''defendant'' and ''used'' for purposes of § 2K2.6(b)(1). Use of the term ''defendant'' limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused. The term ''used'' requires that the body armor be actively used in order to protect from gunfire or be used as a means of bartering. Finally, the commentary provides that when subsection (b)(1) applies and the defendant also is convicted of the underlying offense (the offense with respect to which the body armor was used), the counts shall be grouped pursuant to subsection (c) of § 3D1.2 (Groups of Closely Related Counts).

Section 3B1.5 (Use of Body Armor in Drug Trafficking Crimes and Crimes of

Violence) has been amended so that the adjustment in that guideline does not apply with respect to the 18 U.S.C. § 931 offense. However, if the defendant is convicted of the offense with respect to which the body armor was used, § 3B1.5 will apply to that offense.

9. *Amendment:* Section 2L2.2(b) is amended by adding at the end the following:

''(3) If the defendant fraudulently obtained or used a United States passport, increase by 4 levels.''.

The Commentary to § 2L2.2 captioned ''Application Notes'' is amended by striking Note 1 and inserting the following:

''1. Definition.—For purposes of this guideline, 'immigration and naturalization offense' means any offense covered by Chapter Two, Part L.''; by striking Note 2, and redesignating Note 3 as Note 2; and in Note 2, as redesignated by this amendment, by inserting ''Application of Subsection (b)(2).—'' before ''Prior''.

The Commentary to § 2L2.2 captioned ''Application Notes'' is amended by adding at the end the following:

''3. Application of Subsection (b)(3).—The term 'used' is to be construed broadly and includes the attempted renewal of previously-issued passports.

4. Multiple Counts.—For the purposes of Chapter Three, Part D (Multiple Counts), a count of conviction for unlawfully entering or remaining in the United States covered by § 2L1.2 (Unlawfully Entering or Remaining in the United States) arising from the same course of conduct as the count of conviction covered by this guideline shall be considered a closely related count to the count of conviction covered by this guideline, and therefore is to be grouped with the count of conviction covered by this guideline.

5. Upward Departure Provision.—If the defendant fraudulently obtained or used a United States passport for the purpose of entering the United States to engage in terrorist activity, an upward departure may be warranted. *See* Application Note 4 of the Commentary to § 3A1.4 (Terrorism).''.

Reason for Amendment: The purpose of this amendment is to provide increased punishment for defendants who fraudulently use or obtain United States passports. The amendment adds a new specific offense characteristic at subsection (b)(3) of § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) that provides an increase of four levels if the defendant fraudulently obtained or used a United States passport. Application Note 3 clarifies that ''use'' is to be construed broadly and includes the attempted renewal of a previously issued United States passport. Application Note 5 invites an upward departure if the defendant fraudulently obtained or used a United States passport with the intent to engage in terrorist activity.

This amendment responds to comments received from the Departments of State and Justice to the effect that maintaining the integrity of United States passports is at the core of United States border and security efforts. Accordingly, this amendment ensures increased punishment for those defendants who threaten the security of the United States by their fraudulent abuse of United States passports.

10. *Amendment:* Section 2Q1.2(b) is amended by adding at the end the following:

''(7) If the defendant was convicted under 49 U.S.C. § 5124 or § 46312, increase by 2 levels.''.

The Commentary to § 2Q1.2 captioned ''Statutory Provisions'' is amended by striking ''; 49 U.S.C. § 60123(d)'' and inserting ''; 49 U.S.C. §§ 5124, 46312''.

The Commentary to § 2Q1.2 captioned ''Application Notes'' is amended by striking Note 9 and inserting the following:

''9. Other Upward Departure Provisions.—

(A) Civil Adjudications and Failure to Comply with Administrative Order.—In a case in which the defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. *See* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

(B) Extreme Psychological Injury.—If the offense caused extreme psychological injury, an upward departure may be warranted. *See* § 5K2.3 (Extreme Psychological Injury).

(C) Terrorism.—If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. *See* Application Note 4 of the Commentary to § 3A1.4 (Terrorism).''.

Reason for Amendment: This amendment adds a two-level enhancement in § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce) for offenders convicted under 49 U.S.C. § 5124 or § 46312. These offenses pose an inherent risk to large populations in a manner not typically associated with other pollution offenses sentenced under the same guideline.

In addition, this amendment adds an application note inviting an upward departure if the offense was calculated to influence or affect the conduct of the government by intimidation or coercion, or to retaliate against government conduct. The Commission added this departure provision to address concerns that terrorists may commit hazardous material transportation offenses because of their potential to cause a one-time, catastrophic event. The upward departure provision would apply in cases in which a defendant who has a terrorist motive is not also convicted of a ''federal crime of terrorism'' that would trigger application of § 3A1.4 (Terrorism).

This amendment also adds an upward departure provision that could apply if the offense resulted in extreme psychological injury. This provision conforms to the upward departure provision found at § 2Q1.4 (Tampering or Attempted Tampering with a Public Water System; Threatening to Tamper with a Public Water System).

11. *Amendment:* Chapter Eight is amended by striking the ''Introductory Commentary'' and inserting the following:

Introductory Commentary

The guidelines and policy statements in this chapter apply when the convicted defendant is an organization. Organizations can act only through agents and, under federal criminal law, generally are vicariously liable for offenses committed by their agents. At the same time, individual agents are responsible for their own criminal conduct. Federal prosecutions of organizations therefore frequently involve individual and organizational co-defendants. Convicted individual agents of organizations are sentenced in accordance with the guidelines and policy statements in the preceding chapters. This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence, and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct.

This chapter reflects the following general principles:

First, the court must, whenever practicable, order the organization to remedy any harm caused by the offense. The resources expended to remedy the harm should not be viewed as punishment, but rather as a means of making victims whole for the harm caused.

Second, if the organization operated primarily for a criminal purpose or primarily by criminal means, the fine should be set sufficiently high to divest the organization of all its assets.

Third, the fine range for any other organization should be based on the seriousness of the offense and the culpability of the organization. The seriousness of the offense generally will be reflected by the greatest of the pecuniary gain, the pecuniary loss, or the amount in a guideline offense level fine table. Culpability generally will be determined by six factors that the sentencing court must consider. The four factors that increase the ultimate punishment of an organization are: (i) The involvement in or tolerance of criminal activity; (ii) the prior history of the organization; (iii) the violation of an order; and (iv) the obstruction of justice. The two factors that mitigate the ultimate punishment of an organization are: (i) The existence of an effective compliance and ethics program; and (ii) self-reporting, cooperation, or acceptance of responsibility.

Fourth, probation is an appropriate sentence for an organizational defendant when needed to ensure that another sanction will be fully implemented, or to ensure that steps will be taken within the organization to reduce the likelihood of future criminal conduct.

These guidelines offer incentives to organizations to reduce and ultimately eliminate criminal conduct by providing a structural foundation from which an organization may self-police its own conduct through an effective compliance and ethics program. The prevention and detection of criminal conduct, as facilitated by an effective compliance and ethics program, will assist an organization in encouraging ethical conduct and in complying fully with all applicable laws.''.

Section 8A1.2(a) is amended by inserting '', Subpart 1'' after ''Part B''.

Section 8A1.2(b)(2)(D) is amended by adding at the end the following:

''To determine whether the organization had an effective compliance and ethics program for purposes of § 8C2.5(f), apply § 8B2.1 (Effective Compliance and Ethics Program).''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended in Note 3(c) in the second sentence by inserting ''of the organization'' after ''high-level personnel''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended by striking Note 3(k).

Chapter Eight, Part B is amended by striking the heading and inserting the following:

PART B—REMEDYING HARM FROM CRIMINAL CONDUCT, AND EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

1. REMEDYING HARM FROM CRIMINAL CONDUCT'';

and by adding at the end the following new subpart:

''2. EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

§ 8B2.1. Effective Compliance and Ethics Program

(a) To have an effective compliance and ethics program, for purposes of subsection (f) of § 8C2.5 (Culpability Score) and subsection (c)(1) of § 8D1.4 (Recommended Conditions of Probation—Organizations), an organization shall—

(1) Exercise due diligence to prevent and detect criminal conduct; and

(2) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

Such compliance and ethics program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting criminal conduct. The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct.

(b) Due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law within the meaning of subsection (a) minimally require the following:

(1) The organization shall establish standards and procedures to prevent and detect criminal conduct.

(2)(A) The organization's governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.

(B) High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program, as described in this guideline. Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.

(C) Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance and ethics program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.

(3) The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.

(4)(A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.

(B) The individuals referred to in subdivision (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents.

(5) The organization shall take reasonable steps—

(A) To ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;

(B) To evaluate periodically the effectiveness of the organization's compliance and ethics program; and

(C) To have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

(6) The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.

(7) After criminal conduct has been detected, the organization shall take reasonable steps to respond

appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program.

(c) In implementing subsection (b), the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process.

Commentary

Application Notes:

1. Definitions.—For purposes of this guideline:

'Compliance and ethics program' means a program designed to prevent and detect criminal conduct.

'Governing authority' means the (A) the Board of Directors; or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization.

'High-level personnel of the organization' and 'substantial authority personnel' have the meaning given those terms in the Commentary to § 8A1.2 (Application Instructions—Organizations).

'Standards and procedures' means standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct.

2. Factors to Consider in Meeting Requirements of this Guideline.—

(A) In General.—Each of the requirements set forth in this guideline shall be met by an organization; however, in determining what specific actions are necessary to meet those requirements, factors that shall be considered include: (i) Applicable industry practice or the standards called for by any applicable governmental regulation; (ii) the size of the organization; and (iii) similar misconduct.

(B) Applicable Governmental Regulation and Industry Practice.—An organization's failure to incorporate and follow applicable industry practice or the standards called for by any applicable governmental regulation weighs against a finding of an effective compliance and ethics program.

(C) The Size of the Organization.—

(i) In General.—The formality and scope of actions that an organization shall take to meet the requirements of this guideline, including the necessary features of the organization's standards and procedures, depend on the size of the organization.

(ii) Large Organizations.—A large organization generally shall devote more formal operations and greater resources in meeting the requirements of this guideline than shall a small organization. As appropriate, a large organization should encourage small organizations (especially those that have, or seek to have, a business relationship with the large organization) to implement effective compliance and ethics programs.

(iii) Small Organizations.—In meeting the requirements of this guideline, small organizations shall demonstrate the same degree of commitment to ethical conduct and compliance with the law as large organizations. However, a small organization may meet the requirements of this guideline with less formality and fewer resources than would be expected of large organizations. In appropriate circumstances, reliance on existing resources and simple systems can demonstrate a degree of commitment that, for a large organization, would only be demonstrated through more formally planned and implemented systems.

Examples of the informality and use of fewer resources with which a small organization may meet the requirements of this guideline include the following: (I) The governing authority's discharge of its responsibility for oversight of the compliance and ethics program by directly managing the organization's compliance and ethics efforts; (II) training employees through informal staff meetings, and monitoring through regular 'walk-arounds' or continuous observation while managing the organization; (III) using available personnel, rather than employing separate staff, to carry out the compliance and ethics program; and (IV) modeling its own compliance and ethics program on existing, well-regarded compliance and ethics programs and best practices of other similar organizations.

(D) Recurrence of Similar Misconduct.—Recurrence of similar misconduct creates doubt regarding whether the organization took reasonable steps to meet the requirements of this guideline. For purposes of this subdivision, 'similar misconduct' has the meaning given that term in the Commentary to § 8A1.2 (Application Instructions—Organizations).

3. Application of Subsection (b)(2).—High-level personnel and substantial authority personnel of the organization shall be knowledgeable about the content and operation of the compliance and ethics program, shall perform their assigned duties consistent with the exercise of due diligence, and shall promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

If the specific individual(s) assigned overall responsibility for the compliance and ethics program does not have day-to-day operational responsibility for the program, then the individual(s) with day-to-day operational responsibility for the program typically should, no less than annually, give the governing authority or an appropriate subgroup thereof information on the implementation and effectiveness of the compliance and ethics program.

4. Application of Subsection (b)(3).—

(A) Consistency with Other Law.—Nothing in subsection (b)(3) is intended to require conduct inconsistent with any Federal, State, or local law, including any law governing employment or hiring practices.

(B) Implementation.—In implementing subsection (b)(3), the organization shall hire and promote individuals so as to ensure that all individuals within the high-level personnel and substantial authority personnel of the organization will perform their assigned duties in a manner consistent with the exercise of due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law under subsection (a). With respect to the hiring or promotion of such individuals, an organization shall consider the relatedness of the individual's illegal activities and other misconduct (*i.e.*, other conduct inconsistent with an effective compliance and ethics program) to the specific responsibilities the individual is anticipated to be assigned and other factors such as: (i) The recency of the individual's illegal activities and other misconduct; and (ii) whether the individual has engaged in other such illegal activities and other such misconduct.

5. Application of Subsection (b)(6).—Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

6. Application of Subsection (c).—To meet the requirements of subsection (c), an organization shall:

(A) Assess periodically the risk that criminal conduct will occur, including assessing the following:

(i) The nature and seriousness of such criminal conduct.

(ii) The likelihood that certain criminal conduct may occur because of the nature of the organization's

business. If, because of the nature of an organization's business, there is a substantial risk that certain types of criminal conduct may occur, the organization shall take reasonable steps to prevent and detect that type of criminal conduct. For example, an organization that, due to the nature of its business, employs sales personnel who have flexibility to set prices shall establish standards and procedures designed to prevent and detect price-fixing. An organization that, due to the nature of its business, employs sales personnel who have flexibility to represent the material characteristics of a product shall establish standards and procedures designed to prevent and detect fraud.

(iii) The prior history of an organization may indicate types of criminal conduct that it shall take actions to prevent and detect.

(B) Prioritize periodically, as appropriate, the actions taken pursuant to any requirement set forth in subsection (b), in order to focus on preventing and detecting the criminal conduct identified under subdivision (A) of this note as most likely to occur.

(C) Modify, as appropriate, the actions taken pursuant to any requirement set forth in subsection (b) to reduce the risk of criminal conduct identified under subdivision (A) of this note as most likely to occur.

Background: This section sets forth the requirements for an effective compliance and ethics program. This section responds to section 805(a)(2)(5) of the Sarbanes-Oxley Act of 2002, Public Law 107–204, which directed the Commission to review and amend, as appropriate, the guidelines and related policy statements to ensure that the guidelines that apply to organizations in this chapter 'are sufficient to deter and punish organizational criminal misconduct.'

The requirements set forth in this guideline are intended to achieve reasonable prevention and detection of criminal conduct for which the organization would be vicariously liable. The prior diligence of an organization in seeking to prevent and detect criminal conduct has a direct bearing on the appropriate penalties and probation terms for the organization if it is convicted and sentenced for a criminal offense.''.

The Commentary to § 8C2.4 captioned ''Application Notes'' is amended in Note 2 by striking ''(Larceny, Embezzlement, and Other Forms of Theft)'' and inserting ''(Theft, Property Destruction, and Fraud)''.

Section 8C2.5 is amended by striking subsection (f) and inserting the following:

''(f) Effective Compliance and Ethics Program

(1) If the offense occurred even though the organization had in place at the time of the offense an effective compliance and ethics program, as provided in § 8B2.1 (Effective Compliance and Ethics Program), subtract 3 points.

(2) Subsection (f)(1) shall not apply if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities.

(3)(A) Except as provided in subdivision (B), subsection (f)(1) shall not apply if an individual within high-level personnel of the organization, a person within high-level personnel of the unit of the organization within which the offense was committed where the unit had 200 or more employees, or an individual described in § 8B2.1(b)(2)(B) or (C), participated in, condoned, or was willfully ignorant of the offense.

(B) There is a rebuttable presumption, for purposes of subsection (f)(1), that the organization did not have an effective compliance and ethics program if an individual—

(i) Within high-level personnel of a small organization; or

(ii) Within substantial authority personnel, but not within high-level personnel, of any organization,

participated in, condoned, or was willfully ignorant of, the offense.''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended by striking Note 1 and inserting the following:

''1. Definitions.—For purposes of this guideline, 'condoned', 'prior criminal adjudication', 'similar misconduct', 'substantial authority personnel', and 'willfully ignorant of the offense' have the meaning given those terms in Application Note 3 of the Commentary to § 8A1.2 (Application Instructions—Organizations).

'Small Organization', for purposes of subsection (f)(3), means an organization that, at the time of the instant offense, had fewer than 200 employees.''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 3 in the last sentence by striking ''entire organization'' and inserting ''organization in its entirety''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 10 by striking ''The second proviso in subsection (f)'' and inserting ''Subsection (f)(2)''; and by striking ''this proviso'' and inserting ''subsection (f)(2)''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 12 by adding at the end the following:

''Waiver of attorney-client privilege and of work product protections is not a prerequisite to a reduction in culpability score under subdivisions (1) and (2) of subsection (g) unless such waiver is necessary in order to provide timely and thorough disclosure of all pertinent information known to the organization.''.

Section 8C2.8(a) is amended in subdivision (9) by striking ''and''; in subdivision (10) by striking the period at the end of the subdivision and inserting ''; and''; and by adding at the end the following:

''(11) whether the organization failed to have, at the time of the instant offense, an effective compliance and ethics program within the meaning of § 8B2.1 (Effective Compliance and Ethics Program).''.

The Commentary to § 8C2.8 captioned ''Application Notes'' is amended in Note 4 in the first sentence by inserting ''within high-level personnel of'' after ''organization or''.

Section 8C4.10 is amended by striking ''(Effective Program to Prevent and Detect Violations of Law)'' and inserting ''(Effective Compliance and Ethics Program)''; and by adding at the end the following paragraph:

''Similarly, if, at the time of the instant offense, the organization was required by law to have an effective compliance and ethics program, but the organization did not have such a program, an upward departure may be warranted.''.

Chapter Eight, Part D, is amended in the ''Introductory Commentary'' by striking ''8D1.5'' and inserting ''8D1.4, and § 8F1.1,''.

Section 8D1.1(a) is amended by striking subdivision (3) and inserting the following:

''(3) If, at the time of sentencing, (A) the organization (i) has 50 or more employees, or (ii) was otherwise required under law to have an effective compliance and ethics program; and (B) the organization does not have such a program;''.

Section 8D1.4(b)(4) is amended by striking ''(1)'' and inserting ''(A)''; by striking ''(2)'' and inserting ''(B)''; and by striking ''(3)'' and inserting ''(C)''.

Section 8D1.4(c) is amended by striking subdivision (1) and inserting the following:

''(1) The organization shall develop and submit to the court an effective compliance and ethics program

consistent with § 8B2.1 (Effective Compliance and Ethics Program). The organization shall include in its submission a schedule for implementation of the compliance and ethics program.'';

and in subdivisions (2), (3), and (4) by striking ''to prevent and detect violations of law'' each place it appears and inserting ''referred to in subdivision (1)''.

The Commentary to § 8D1.4 captioned ''Application Notes'' is amended by striking ''Notes'' in the heading and inserting ''Note''; and in Note 1 by striking ''a program to prevent and detect violations of law'' and inserting ''a compliance and ethics program''; and by striking the last sentence of the first paragraph and inserting ''The court should approve any program that appears reasonably calculated to prevent and detect criminal conduct, as long as it is consistent with § 8B2.1 (Effective Compliance and Ethics Program), and any applicable statutory and regulatory requirements.''.

Chapter Eight, Part D is amended by striking § 8D1.5 and its accompanying commentary.

Chapter Eight is amended by adding at the end the following Part:

''PART F—VIOLATIONS OF PROBATION—ORGANIZATIONS

§ 8F1.1. Violations of Conditions of Probation—Organizations (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

Application Notes:

1. Appointment of Master or Trustee.—In the event of repeated violations of conditions of probation, the appointment of a master or trustee may be appropriate to ensure compliance with court orders.

2. Conditions of Probation.—Mandatory and recommended conditions of probation are specified in §§ 8D1.3 (Conditions of Probation—Organizations) and 8D1.4 (Recommended Conditions of Probation—Organizations).''.

Reason for Amendment: This amendment modifies existing provisions of Chapter Eight and provides a new guideline at § 8B2.1 (Effective Compliance and Ethics Program). Most notably, § 8B2.1 strengthens the existing criteria an organization must follow in order to establish and maintain an effective program to prevent and detect criminal conduct for purposes of mitigating its sentencing culpability for an offense. This amendment is the culmination of a multi-year review of the organizational guidelines, implements several recommendations issued on October 7, 2003, by the Commission's Ad Hoc Advisory Group on the Organizational Sentencing Guidelines (Advisory Group), and responds to the Sarbanes-Oxley Act (''the Act''), Pub. L. 107–204, which in section 805 directed the Commission to review and amend the organizational guidelines and related policy statements to ensure that they are sufficient to deter and punish organizational misconduct.

Consistent with the Act's focus on deterring criminal misconduct, this amendment revises the introductory commentary to Chapter Eight to highlight the importance of structural safeguards designed to prevent and detect criminal conduct. First and foremost among these safeguards is a regime of internal crime prevention and self-policing (''an effective compliance and ethics program''). While Chapter Eight derives its authority and content from the federal criminal law, an effective compliance and ethics program not only will prevent and detect criminal conduct, but also should facilitate compliance with all applicable laws.

Under § 8C2.5(g) (Culpability Score), an effective compliance and ethics program is one of the mitigating factors that can reduce an organization's fine punishment under Chapter Eight. The absence of an effective program may be a reason for the court to place an organization on probation, and the implementation of an effective program may be a condition of probation for organizations under § 8D1.4(c) (Recommended Conditions of Probation-Organizations).

In order to emphasize the importance of compliance and ethics programs and to provide more prominent guidance on the requirements for an effective program, the amendment elevates the criteria for an effective compliance program previously set forth in the Commentary to § 8A1.2 (Application Instructions—Organizations) into a separate guideline. Furthermore, the amendment elaborates upon these criteria, introducing additional rigor generally and imposing significantly greater responsibilities on the organization's governing authority and executive leadership.

Section 8B2.1(a)(1) sets forth the existing requirement that an organization exercise due diligence to prevent and detect criminal conduct, but adds the requirement that an organization ''otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.'' This addition is intended to reflect the emphasis on ethical conduct and values incorporated into recent legislative and regulatory reforms, such as those provided by the Act.

Section 8B2.1(b) provides that due diligence and the promotion of desired organizational culture are indicated by the fulfilment of seven minimum requirements, which are the hallmarks of an effective program that encourages compliance with the law and ethical conduct. While the framework of requirements is derived from the existing criteria for an effective compliance program at Application Note 3(k) to § 8A1.2, significant additional guidance is provided.

First, § 8B2.1(b)(1) provides that organizations must establish ''standards and procedures to prevent and detect criminal conduct.'' Application Note 1 establishes that ''standards and procedures'' encompass ''standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct.''

Second, the new guideline replaces the requirement in Application Note 3(k)(2) to § 8A1.2 that ''specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance'' with more specific and exacting requirements. Section 8B2.1(b)(2) defines the specific roles and reporting relationships of particular categories of personnel with respect to compliance and ethics program responsibilities. Specifically, the Commission has determined that the organization's governing authority must ''be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.'' Application Note 1 defines ''governing authority'' as the ''(A) Board of Directors, or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization.''

Section 8B2.1(b)(2) provides that it is the organizational leadership, defined in the guidelines as ''high-level personnel,'' who must ensure that the organization's program is effective. The accompanying commentary at Application Note 1 retains existing definitions for the terms ''high-level personnel'' and ''substantial authority personnel'' of the organization. Section

8B2.1(b)(2)(B) provides that the organization must assign someone in high-level personnel ''overall responsibility'' for the program. This prescription makes explicit that, while another individual or individuals may be assigned operational responsibility for the program, someone within high-level personnel must be assigned the ultimate responsibility for the program's effectiveness.

Section 8B2.1(b)(2)(C) requires that certain individual(s) have day-to-day responsibility for the compliance and ethics program and adequate resources to carry out the associated tasks. Specifically, § 8B2.1 requires that the individual assigned day-to-day operational responsibility for the program, whether it be a high-level person or an employee to whom this task is assigned, report to organizational leadership and the governing authority on the program. If authority is delegated, the governing authority must receive reports from such individuals at least annually, according to the commentary in Application Note 3. In order to carry out such responsibility, the new guideline mandates that such individual or individuals, no matter the level, must ''be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.''

Third, § 8B2.1(b)(3) replaces the previous requirement that substantial authority personnel be screened for their ''propensity to engage in violations of law'' with the requirement that the organization ''use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.'' Application Note 4(A) makes explicit that this provision does not require any ''conduct inconsistent with any Federal, State, or local law, including any law governing employment or hiring practices.'' Application Note 4(B) provides that the organization shall hire and promote individuals so as to ensure that all individuals within the organizational leadership will perform their assigned duties in a manner consistent with the exercise of due diligence and the promotion of an organizational culture that encourages a commitment to compliance with ethics and the law. If an individual has engaged in illegal activities, the organization has an obligation to consider the relatedness of the individual's illegal activities and other misconduct to the specific responsibilities such individual is expected to be assigned. The recency of the individual's illegal activities and other misconduct also should be considered.

Fourth, § 8B2.1(b)(4) makes compliance and ethics training a requirement, and specifically extends the training requirement to the upper levels of an organization, including the governing authority and high-level personnel, in addition to all of the organization's employees and agents, as appropriate. Furthermore, subsection (b)(4) establishes that this communication and training obligation is ongoing, requiring ''periodic'' updates.

Fifth, § 8B2.1(b)(5) expands the existing requirement regarding reasonable steps to achieve compliance. Specifically, the amendment mandates that organizations use auditing and monitoring systems designed to detect criminal conduct. It also adds the specific requirement that the organization periodically evaluate the effectiveness of its compliance and ethics program. Significantly, the new guideline expands the focus of internal reporting from simply reporting ''the criminal conduct * * * of others'' to using internal systems to either ''report or seek guidance regarding potential or actual criminal conduct.'' The addition of ''seeking guidance'' is consistent with the increased focus of this guideline on the prevention and deterrence of wrongdoing within organizations. This section also replaces the existing reference to ''reporting systems without fear of retribution'' with the more specific requirement that the organization must have ''a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.''

The Commission is aware that both anonymous and confidential mechanisms have inherent value and limitations. For example, anonymous mechanisms may hinder an organization from engaging in an effective dialogue with the potential whistleblower to discover additional information that might lead to a more efficient detection of the wrongdoing. Confidential mechanisms may permit the dialogue and development of maximum information, but the ability of organizations to ensure total confidentiality may be limited by legal obligations relating to self-disclosure, law enforcement subpoenas, and civil discovery requests. The Commission intends for an organization to have maximum flexibility in implementing a system that is best suited to its culture and conforms to applicable law. A responsible organization is expected, as appropriate, to communicate to its employees any applicable limitations of its internal reporting mechanisms.

Sixth, § 8B2.1(b)(6) broadens the existing criterion that the compliance standards be enforced through disciplinary measures by adding that such standards also be encouraged through ''appropriate incentives to perform in accordance with the compliance and ethics program.'' This addition articulates both a duty to promote proper conduct in whatever manner an organization deems appropriate, as well as a duty to sanction improper conduct.

Finally, § 8B2.1(b)(7) retains the requirement that an organization take reasonable steps to respond to and prevent further similar criminal conduct. This dual duty underscores the organization's obligation to address both specific instances of misconduct and systemic shortcomings that compromise the deterrent effect of its compliance and ethics program.

In addition to the seven requirements for a compliance and ethics program, § 8B2.1(c) expressly provides, as an essential component of the design, implementation, and modification of an effective program, that an organization must periodically assess the risk of the occurrence of criminal conduct. The new guideline includes at Application Note 6 various factors that should be addressed when assessing relevant risks. Specifically, organizations should evaluate the nature and seriousness of potential criminal conduct, the likelihood that certain criminal conduct may occur because of the nature of the organization's business, and the prior history of the organization. To be effective, this process must be ongoing. Organizations must periodically prioritize their compliance and ethics resources to target those potential criminal activities that pose the greatest threat in light of the risks identified.

The amendment also provides additional guidance with respect to the implementation of compliance and ethics programs by small organizations by including frequent references to small organizations throughout the commentary of § 8B2.1 and providing illustrations (*see e.g.*, Application Note 2(C)(ii)). It also encourages larger organizations to promote the adoption of compliance and ethics programs by smaller organizations, including those

with which they conduct or seek to conduct business.

This amendment also changes the automatic preclusion for compliance program credit provided in § 8C2.5(f) (Culpability Score) for ''small organizations.'' A ''small organization'' is defined, for this subsection only, as an organization having fewer than 200 employees. This modification is intended to assist smaller organizations that previously may have been automatically precluded, because of their size, from arguing for a culpability score reduction based upon an effective compliance and ethics program that fulfills all of the guideline requirements. Rather than precluding absolutely these small organizations from obtaining the reduction if certain categories of high-level personnel are involved in the offense of conviction, § 8C2.5(f)(3) establishes that an offense by an individual within high-level personnel of the organization results in a rebuttable presumption for a small organization that it did not have an effective program. The small organization, however, can rebut that presumption by demonstrating that it had an effective program, despite the involvement in the offense of a person high in the organization's structure.

This amendment also addresses concerns about the relationship between obtaining credit under § 8C2.5(g) and waiver of the attorney-client privilege and the work product protection doctrine. Pursuant to § 8C2.5(g)(1) and (2), an organization's culpability score will be reduced if it ''fully cooperated in the investigation'' of its wrongdoing, among other factors. The Commission's Ad Hoc Advisory Group on the Organizational Sentencing Guidelines studied the relationship between waivers and § 8C2.5(g) by obtaining testimony and conducting its own research, including a survey of United States Attorneys' Offices (all of which are described at Part V of the Advisory Group Report of October 7, 2003). The Commission addresses some of these concerns by providing at Application Note 12 that waiver of the attorney-client privilege and of work product protections ''is not a prerequisite to a reduction in culpability score under subdivisions (1) and (2) of subsection (g) unless such waiver is necessary in order to provide timely and thorough disclosure of all pertinent information known to the organization.'' The Commission expects that such waivers will be required on a limited basis. See ''United States Attorneys'' Bulletin,'' November 2003, Volume 51, Number 6, pp. 1, 8.

12. *Amendment:* The Commentary to § 1B1.3 captioned ''Application Notes'' is amended in Note 5 by striking the fifth sentence and inserting ''In a case in which creation of risk is not adequately taken into account by the applicable offense guideline, an upward departure may be warranted.''.

The Commentary to § 1B1.4 captioned ''Background'' is amended in the fifth sentence by striking ''sentencing above the guideline range'' and inserting ''an upward departure''.

The Commentary to § 1B1.8 captioned ''Application Notes'' is amended in Note 1 in the third sentence by striking ''increase the defendant's sentence above the applicable guideline range by upward departure'' and inserting ''depart upward''; and in the last sentence by striking ''below the applicable guideline range'' and inserting ''downward''.

Section 2B1.1(b)(10), as redesignated by Amendment 3 of this document, is amended in subdivision (A) by striking ''device-making equipment'' and inserting ''(i) device-making equipment, or (ii) authentication feature''; in subdivision (B) by inserting ''(i)'' before ''unauthorized access''; and by inserting '', or (ii) authentication feature'' after ''counterfeit access device''; and in subdivision (C)(i) by striking the semi-colon and inserting a comma.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 4 by striking subdivision (C)(ii), as redesignated by Amendment 3 of this document, and inserting the following:

''(ii) Special Rule.—A case described in subdivision (C)(i) of this note that involved—

(I) A United States Postal Service relay box, collection box, delivery vehicle, satchel, or cart, shall be considered to have involved at least 50 victims.

(II) A housing unit cluster box or any similar receptacle that contains multiple mailboxes, whether such receptacle is owned by the United States Postal Service or otherwise owned, shall, unless proven otherwise, be presumed to have involved the number of victims corresponding to the number of mailboxes in each cluster box or similar receptacle.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 7, as redesignated by Amendment 3 of this document, by striking ''(b)(7)'' each place it appears and inserting ''(b)(8)''; and in Note 8, as redesignated by Amendment 3 of this document, by striking ''(b)(8)'' each place it appears and inserting ''(b)(9)''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 9, as redesignated by Amendment 3 of this document, by striking ''(b)(9)'' each place it appears and inserting ''(b)(10)''; in subdivision (A) by inserting before the paragraph that begins '' 'Counterfeit access device' '' the following paragraph:

'' 'Authentication feature' has the meaning given that term in 18 U.S.C. § 1028(d)(1).''; in the paragraph that begins '' 'Means of identification' '' by striking ''(d)(4)'' and inserting ''(d)(7)''; and in subdivision (B) by inserting ''Authentication Features and'' before ''Identification Documents.''; and by inserting ''authentication features,'' after ''involving''.

The Commentary § 2B1.1 captioned ''Application Notes'' is amended in Note 10, as redesignated by Amendment 3 of this document, by striking ''(b)(10)'' each place it appears and inserting ''(b)(11)''; in Note 11, as redesignated by Amendment 3 of this document, by striking ''(b)(12)'' each place it appears and inserting ''(b)(13)''; in Note 12, as redesignated by Amendment 3 of this document, by striking ''(b)(12)'' each place it appears and inserting ''(b)(13)''; in Note 13, as redesignated by Amendment 3 of this document, by striking ''(b)(13)'' each place it appears and inserting ''(b)(14)''; and by striking ''(b)(12)(B)'' each place it appears and inserting ''(b)(13)(B)''; in Note 14, as redesignated by Amendment 3 of this document, by striking ''(b)(14)'' and inserting ''(b)(15)''; and in Note 19(B), as redesignated by Amendment 3 of this document, by striking ''(b)(13)(iii)'' and inserting ''(b)(14)(iii)''.

The Commentary to § 2B1.1 captioned ''Background'' is amended in the ninth paragraph by striking ''Subsection (b)(7)(D)'' and inserting ''Subsection (b)(8)(D)''; in the tenth paragraph by striking ''Subsection (b)(8)'' and inserting ''Subsection (b)(9)''; in the eleventh paragraph by striking ''Subsections (b)(9)(A) and (B)'' and inserting ''Subsections (b)(10)(A)(i) and (B)(i)''; in the twelfth paragraph by striking ''Subsection (b)(9)(C)'' and inserting ''Subsection (b)(10)(C)''; in the thirteenth paragraph by striking ''Subsection (b)(11)(B)'' and inserting ''Subsection (b)(12)(B)''; in the fourteenth paragraph by striking ''Subsection (b)(12)(A)'' and inserting ''Subsection (b)(13)(A)''; in the fifteenth paragraph by striking ''Subsection (b)(12)(B)'' and inserting ''Subsection (b)(13)(B)''; in the sixteenth paragraph by striking ''Subsection (b)(13) implements'' and inserting ''Subsection (b)(14) implements''; and by striking ''subsection (b)(13)(B)'' and inserting ''subsection (b)(14)(B)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 7 by striking ''sentence below the applicable guideline range'' and inserting ''downward departure''.

The Commentary to § 2R1.1 captioned ''Application Notes'' is amended in Note 7 by striking '', or even above,''; and by inserting '', or an upward departure,'' after ''guideline range''.

The Commentary to § 2T1.8 captioned ''Application Note'' is amended in Note 1 by striking ''a sentence above the guidelines'' and inserting ''an upward departure''.

Chapter Two, Part T, Subpart 3, is amended in the ''Introductory Commentary'' by striking ''imposing a sentence above that specified in the guideline in this Subpart'' and inserting ''departing upward''.

Chapter Two, Part X is amended by adding at the end the following new Subpart:

''6. OFFENSES INVOLVING USE OF A MINOR IN A CRIME OF VIOLENCE

§ 2X6.1. Use of a Minor in a Crime of Violence.

(a) Base Offense Level: 4 plus the offense level from the guideline applicable to the underlying crime of violence.

Commentary

Statutory Provision: 18 U.S.C. § 25.

Application Notes:

1. Definition.—For purposes of this guideline, 'underlying crime of violence' means the crime of violence as to which the defendant is convicted of using a minor.

2. Inapplicability of § 3B1.4.—Do not apply the adjustment under § 3B1.4 (Using a Minor to Commit a Crime).

3. Multiple Counts.—

(A) In a case in which the defendant is convicted under both 18 U.S.C. § 25 and the underlying crime of violence, the counts shall be grouped pursuant to subsection (a) of § 3D1.2 (Groups of Closely Related Counts).

(B) Multiple counts involving the use of a minor in a crime of violence shall not be grouped under § 3D1.2.''.

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 5(b) by striking ''3(g)'' and inserting ''4(g)''.

Section 3D1.2(d) is amended by striking the period after ''2P1.3'' and inserting a semi-colon; and by inserting after the line that begins ''§§ 2P1.1,'' the following new line: ''§ 2X6.1.''.

The Commentary to § 3D1.3 captioned ''Application Notes'' is amended in Note 4 by striking ''a sentence above the guideline range'' and inserting ''an upward departure''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 in the first sentence of the paragraph that begins '' 'Crime of violence' '' does not include'' by inserting '', unless the possession was of a firearm described in 26 U.S.C. § 5845(a)'' before the period.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 by inserting before the paragraph that begins ''Unlawfully possessing a prohibited flask'' the following paragraph:

''Unlawfully possessing a firearm described in 26 U.S.C. § 5845(a) (*e.g.*, a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun) is a 'crime of violence'.''.

The Commentary to § 4B1.4 captioned ''Application Note'' is amended by striking ''Note'' in the heading and inserting ''Notes''; and by adding at the end the following:

''2. Application of § 4B1.4 in Cases Involving Convictions Under 18 U.S.C. § 844(h), § 924(c), or § 929(a).—If a sentence under this guideline is imposed in conjunction with a sentence for a conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a), do not apply either subsection (b)(3)(A) or (c)(2). A sentence under 18 U.S.C. § 844(h), § 924(c), or § 929(a) accounts for the conduct covered by subsections (b)(3)(A) and (c)(2) because of the relatedness of the conduct covered by these subsections to the conduct that forms the basis for the conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a).

In a few cases, the rule provided in the preceding paragraph may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. § 844(h), § 924(c), or § 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a) (*i.e.*, the guideline range that would have resulted if subsections (b)(3)(A) and (c)(2) had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a).''.

Section 5C1.2(a) is amended by striking ''verbatim''.

The Commentary to § 5G1.2 captioned ''Application Notes'' is amended in Note 3(B)(iii) in the first sentence by striking ''2113(a) (20 year'' and inserting ''113(a)(3) (10 year''; in the second sentence by striking ''400'' and inserting ''460'', and by striking ''360-life'' and inserting ''460–485 months''; and in the third sentence by striking ''40'' and inserting ''100'', and by striking ''2113(a)'' and inserting ''113(a)(3)''.

Section 5H1.1 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''; by striking ''impose a sentence below the applicable guideline range when'' and inserting ''depart downward in a case in which''; and by inserting ''; Gambling Addiction'' after ''Abuse''.

Section 5H1.2 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Section 5H1.3 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Section 5H1.5 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Chapter Five, Part H is amended by striking § 5H1.6 and inserting the following:

5H1.6. Family Ties and Responsibilities (Policy Statement).

In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.''.

The Commentary to § 5H1.6 is amended by adding at the end the following:

''*Background:* Section 401(b)(4) of Public Law 108–21 directly amended this policy statement to add the second paragraph, effective April 30, 2003.''.

Section 5H1.11 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Section 5H1.12 is amended by striking ''grounds for imposing a sentence outside the applicable guideline range'' and inserting ''in

determining whether a departure is warranted''.

Section 5K2.14 is amended by striking ''increase the sentence above the guideline range'' and inserting ''depart upward''.

Section 5K2.16 is amended by striking ''departure below the applicable guideline range for that offense'' and inserting ''downward departure''.

Section 5K2.21 is amended by striking ''increase the sentence above the guideline range'' and inserting ''depart upward''.

Section 5K2.22 is amended by striking ''impose a sentence below the applicable guideline range'' each place it appears and inserting ''depart downward''; and by striking ''for imposing a sentence below the guidelines'' and inserting ''to depart downward''.

Section 5K2.23 is amended by striking ''sentence below the applicable guideline range'' and inserting ''downward departure''.

Section 6A1.1 is amended by striking ''A probation officer'' and all that follows through ''presentence report.'' and inserting the following:

''(a) The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless—

(1) 18 U.S.C. § 3593(c) or another statute requires otherwise; or

(2) The court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.

Rule 32(c)(1)(A), Fed. R. Crim. P.

(b) The defendant may not waive preparation of the presentence report.''.

The Commentary to § 6A1.1 is amended to read as follows:

''Commentary

A thorough presentence investigation ordinarily is essential in determining the facts relevant to sentencing. Rule 32(c)(1)(A) permits the judge to dispense with a presentence report in certain limited circumstances, as when a specific statute requires or when the court finds sufficient information in the record to enable it to exercise its statutory sentencing authority meaningfully and explains its finding on the record.''.

Chapter Six, Part A is amended by striking § 6A1.2 and its accompanying commentary and inserting the following:

''§ 6A1.2. Disclosure of Presentence Report; Issues in Dispute (Policy Statement)

(a) The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period. Rule 32(e)(2), Fed. R. Crim. P.

(b) Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. An objecting party must provide a copy of its objections to the opposing party and to the probation officer. After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report accordingly. Rule 32(f), Fed. R. Crim. P.

(c) At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them. Rule 32(g), Fed. R. Crim. P.

Background: In order to focus the issues prior to sentencing, the parties are required to respond in writing to the presentence report and to identify any issues in dispute. *See* Rule 32(f), Fed. R. Crim. P.''.

Section 6A1.3(b) is amended by striking ''Rule 32(c)(1)'' and inserting ''Rule 32(i)''.

The Commentary to § 6A1.3 is amended by striking the first paragraph; by striking ''117 S. Ct. 633, 635'' and inserting ''519 U.S. 148, 154''; and by striking ''117 S. Ct. at 637'' and inserting ''519 U.S. at 157''.

Chapter Six, Part A is amended by adding at the end the following:

''§ 6A1.4. Notice of Possible Departure (Policy Statement)

Before the court may depart from the applicable sentencing guideline range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure. Rule 32(h), Fed. R. Crim. P.

Commentary

Background: The Federal Rules of Criminal Procedure were amended, effective December 1, 2002, to incorporate into Rule 32(h) the holding in *Burns* v. *United States,* 501 U.S. 129, 138–39 (1991). This policy statement parallels Rule 32(h), Fed. R. Crim. P.''.

Chapter Six, Part B is amended by striking the Introductory Commentary and inserting the following:

''Introductory Commentary

Policy statements governing the acceptance of plea agreements under Rule 11(c), Fed. R. Crim. P., are intended to ensure that plea negotiation practices: (1) Promote the statutory purposes of sentencing prescribed in 18 U.S.C. § 3553(a); and (2) do not perpetuate unwarranted sentencing disparity.

These policy statements make clear that sentencing is a judicial function and that the appropriate sentence in a guilty plea case is to be determined by the judge. The policy statements also ensure that the basis for any judicial decision to depart from the guidelines will be explained on the record.''.

Section 6B1.1 is amended by striking subsections (a), (b), and (c) and inserting the following:

''(a) The parties must disclose the plea agreement on open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement on camera. Rule 11(c)(2), Fed. R. Crim. P.

(b) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request. Rule 11(c)(3)(B), Fed. R. Crim. P.

(c) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. Rule 11(c)(3)(A), Fed. R. Crim. P.''.

The Commentary to § 6B1.1 is amended in the first paragraph by striking ''Rule 11(e)'' and inserting ''Rule 11(c)'';

and by striking the second paragraph and inserting the following:

''Section 6B1.1(c) deals with the timing of the court's decision regarding whether to accept or reject the plea agreement. Rule 11(c)(3)(A) gives the court discretion to accept or reject the plea agreement immediately or defer a decision pending consideration of the presentence report. Given that a presentence report normally will be prepared, the Commission recommends that the court defer acceptance of the plea agreement until the court has reviewed the presentence report.''.

Section 6B1.3 is amended by striking ''If a plea'' and all that follows through ''Fed. R. Crim. P.'' and inserting the following:

''If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera)—

(a) Inform the parties that the court rejects the plea agreement;

(b) Advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(c) Advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

Rule 11(c)(5), Fed. R. Crim. P.''.

The Commentary to § 6B1.3 is amended by striking ''Rule 11(e)(4)''and inserting ''Rule 11(c)(5)''; and by striking ''that would require dismissal of charges or imposition of a specific sentence.'' and inserting a period.

Appendix A is amended by inserting after the line referenced to 18 U.S.C. § 4 the following new line: ''18 U.S.C. § 25 2X6.1''.

Reason for Amendment: This nine-part amendment consists of four technical and conforming amendments and five amendments of a more substantive nature, some of which are in response to new legislation.

First, this amendment corrects a typographical error in Application Note 4 to § 3C1.1 (Obstructing or Impeding the Administration of Justice) by changing a reference to Application Note 3(g) to 4(g).

Second, this amendment makes a number of conforming changes to various guideline provisions and commentary as a result of departure amendments previously made in furtherance of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. 108–21 (the ''PROTECT Act'').

Third, this amendment corrects an error in an example provided in Application Note 3(B)(iii) of § 5G1.2 (Sentencing on Multiple Counts of Conviction).

Fourth, this amendment generally updates Chapter Six (Sentencing Procedures and Plea Agreements) in response to a number of amendments that were made to the Federal Rules of Criminal Procedure effective December 1, 2002. While some of these changes to the Rules were substantive, the bulk of the changes to Rules 11 and 32 of the Federal Rules of Criminal Procedure were organizational and stylistic. These guideline amendments conform to those changes made to the Federal Rules of Criminal Procedure with respect to such issues as deadlines for disputed issues and requirements for disclosure of presentence reports, as well as procedures the court must follow in rejecting certain plea agreements. Certain outdated commentary also has been deleted.

Fifth, this amendment broadens the special multiple victim rule in Application Note 4(C)(ii) of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), as redesignated by Amendment 3 of this document, for offenses involving stolen United States mail. The rule is expanded to include theft of mail from housing unit cluster boxes, whether owned by the United States Postal Service or otherwise. The amendment provides a presumption that a theft from such a cluster box involves the number of victims corresponding to the number of mailboxes contained in the cluster box. The same rationale for the original special rule applies to this expansion: (i) Unique proof problems in that once entry is gained to such a cluster box and mail is removed, it is difficult to determine the number of persons from whom mail was stolen; (ii) the frequently significant, but difficult to quantify, non-monetary losses; and (iii) the importance of maintaining the integrity of the United States mail service. *See* USSG App. C (Vol. II) (Amendment 617). These reasons are equally valid whether the mail receptacle is owned by the United States Postal Service or is privately owned.

Sixth, this amendment modifies § 2B1.1(b)(10), as redesignated by Amendment 3 of this document, which provides a two-level enhancement and a minimum offense level of 12, in response to the Secure Authentication Feature and Enhanced Identification Defense Act of 2003 (the ''SAFE ID Act'') (section 607 of the PROTECT Act, Pub. L. 108–21). That Act created a new offense at 18 U.S.C. § 1028(a)(8), prohibiting the trafficking of authentication features (*e.g.*, a hologram or symbol used by a government agency to determine whether a document is counterfeit, altered, or otherwise falsified), and amended 18 U.S.C. § 1028 to prohibit the transfer or possession of authentication features. This amendment makes § 2B1.1(b)(10) applicable to offenses involving authentication features.

Seventh, this amendment creates a new guideline at § 2X6.1 (Use of a Minor to Commit a Crime of Violence). This new guideline is in response to a new offense provided at 18 U.S.C. § 25 (Use of Minors in Crimes of Violence), which was created by section 601 of the PROTECT Act. The new offense prohibits any person 18 years of age or older from intentionally using a minor to commit a crime of violence or to assist in avoiding detection or apprehension for such offense. For a first conviction, the penalty is twice the maximum term of imprisonment that would otherwise be authorized for the offense, and for each subsequent conviction, three times the maximum term of imprisonment that would otherwise be authorized for the offense.

While consideration was given to expanding the existing two-level adjustment at § 3B1.4 (Using a Minor to Commit a Crime), the Commission determined it was more appropriate and consistent with guideline construction to create a new guideline for the new substantive offense created by Congress in the PROTECT Act. This new guideline at § 2X6.1 directs the court to increase by 4 levels the offense level from the guideline applicable to the underlying crime of violence. Application notes are included to provide that the adjustment under § 3B1.4 is inapplicable if § 2X6.1 is used and to provide rules for the grouping of multiple counts.

Eighth, this amendment expands the definition of ''crime of violence'' in Application Note 1 to § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to include unlawful possession of any firearm described in 26 U.S.C. § 5845(a). The amendment also excepts possession of those firearms described in 26 U.S.C. § 5845(a) from the rule that excludes felon in possession offenses from the definition of ''crime of violence.'' Congress has determined that those firearms described in 26 U.S.C. § 5845(a) are inherently dangerous and when possessed unlawfully, serve only violent purposes. In the National Firearms Act, Pub. L. 90–618, Congress required that these firearms be registered with the National Firearms Registration and Transfer Record. A number of courts have held that possession of certain of these firearms, such as a sawed-off shotgun, is a ''crime of violence'' due to the serious potential risk of physical injury to another person.

The amendment's categorical rule incorporating 26 U.S.C. § 5845(a) firearms includes short-barreled rifles and shotguns, machine guns, silencers, and destructive devices. It will affect

determinations both of career offender status under Chapter Four, Part B and also of appropriate base offense levels in § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition).

Ninth, this amendment provides an application note in § 4B1.4 (Armed Career Criminal) to address an apparent ''double counting'' issue that appears to be present when a defendant is convicted both of 18 U.S.C. § 922(g) (Felon in Possession) and also of an offense such as 18 U.S.C. § 924(c) (Use of a Firearm in Relation to Any Crime of Violence or Drug Trafficking Crime) or a similar offense carrying a mandatory minimum consecutive penalty, such as 18 U.S.C. § 844(h) relating to use of explosives, or 18 U.S.C. § 929(a) relating to use of restricted ammunition.

The basis for the mandatory minimum, consecutive penalties in these offenses is the same as the basis for the enhanced guideline offense level 34 at § 4B1.4(b)(3)(A) and the enhanced Criminal History Category VI at § 4B1.4(c)(2); *i.e.*, the use or possession of the firearm in connection with a crime of violence or controlled substance offense. The Commission determined that the mandatory minimum, consecutive sentences in these statutes are sufficient to take into account the aggravated conduct referenced in § 4B1.4.

An upward departure is provided for those cases that result in a total maximum penalty that is less than the maximum of the guideline range that would have resulted if the enhanced offense level under § 4B1.4(b)(3)(A) and the criminal history enhancement under § 4B1.4(c)(2) had been applied. However, the extent of the upward departure shall not exceed the maximum of the guideline range that would have resulted had there not been a conviction under 18 U.S.C. § 924(c), § 844(h), or § 929(a).

[FR Doc. 04–10990 Filed 5–18–04; 8:45 am]

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Federal Register

Wednesday,
May 19, 2004

Part III

The President

Proclamation 7785—National Defense Transportation Day and National Transportation Week, 2004

Proclamation 7786—National Hurricane Preparedness Week, 2004

Proclamation 7787—Small Business Week, 2004

Proclamation 7788—World Trade Week, 2004

Federal Register
Vol. 69, No. 97
Wednesday, May 19, 2004

Presidential Documents

Title 3—

The President

Proclamation 7785 of May 14, 2004

National Defense Transportation Day and National Transportation Week, 2004

By the President of the United States of America

A Proclamation

Each year, America's transportation system helps many travelers reach their destinations and carries more than 16 billion tons of freight worth almost $12 trillion. In addition, our transportation systems play a critical role in deploying and sustaining our troops and their equipment around the world.

Throughout our history, advances in transportation have been at the forefront of progress. Last December, we celebrated the centennial of the Wright Brothers' first flight in North Carolina. The pioneering work of the Wright Brothers and subsequent improvements in aviation ushered in new eras of freedom and captured the imaginations of people around the world.

Today, our Nation proudly continues this tradition of innovation in all transportation fields. As we observe National Defense Transportation Day and National Transportation Week, we continue to modernize transportation, and we honor transportation professionals who help to keep our transportation systems secure, efficient, and reliable.

To recognize the men and women who work in the transportation industry and who contribute to our Nation's well-being and defense, the Congress, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), has designated the third Friday in May of each year as ''National Defense Transportation Day,'' and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), declared that the week during which that Friday falls be designated as ''National Transportation Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Friday, May 21, 2004, as National Defense Transportation Day and May 16 through May 22, 2004, as National Transportation Week.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 04–11460
Filed 5–18–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7786 of May 14, 2004

National Hurricane Preparedness Week, 2004

By the President of the United States of America

A Proclamation

Hurricanes are among nature's most powerful forces, bringing destructive winds, tornadoes, and floods from torrential rains and ocean storm surges. Each year, several hurricanes develop off American shores in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico. Some of these strike the United States coastline every year, causing numerous fatalities and costing billions of dollars in damage. Many Americans are vulnerable to the dangers of these storms.

In recent years, advances in how we predict and track these storms have improved preparedness and saved lives, but people living in hurricane-prone areas still must be prepared. The National Hurricane Center within the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) recommends developing a family disaster plan, creating a disaster supply kit, and staying aware of current weather situations.

While citizens make preparations to keep themselves safe, the Federal Government is maintaining our commitment to improve forecasts to provide advance warning and to coordinate effective emergency response. The Department of Homeland Security's Federal Emergency Management Agency is also working on a plan to better position disaster equipment and supplies, so Federal resources to support local emergency services arrive quickly.

While no policy can eliminate the threat that hurricanes pose to lives and property, cooperation among citizens and Federal, State, and local officials can reduce the dangers and provide a more effective response to these storms.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 16 through May 22, 2004, as National Hurricane Preparedness Week. I call upon government agencies, private organizations, schools, news media, and residents in hurricane-prone areas to share information about hurricane preparedness and response, and to implement steps to minimize storm damage and save lives. I also call upon Americans living in the coastal areas of our Nation to use this opportunity to learn more about how to protect themselves against the effects of hurricanes and tropical storms.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 04–11461
Filed 5–18–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7787 of May 14, 2004

Small Business Week, 2004

By the President of the United States of America

A Proclamation

The dedication and entrepreneurial spirit of small business owners are vital to our Nation's economic growth and prosperity. We celebrate Small Business Week to applaud the efforts of America's small business men and women in our communities.

Small businesses are a central part of America's economy. They create approximately 70 percent of new private sector jobs in this country. As our Nation's economy continues to grow stronger, we must encourage their spirit of enterprise.

To help small businesses invest and create more jobs, we have decreased the tax burden. We have given small business men and women a fair chance to bid on government contracts. We have a plan to create more opportunity for America's small businesses and workers by making health care costs more affordable and predictable; streamlining regulations and paperwork requirements; reducing frivolous lawsuits; making America less dependent on foreign sources of energy; and permanently eliminating the death tax.

In this Small Business Week, we salute America's small business owners and entrepreneurs and workers for their contributions to America's prosperity and for making our Nation better and stronger.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 16 through May 22, 2004, as Small Business Week. I call upon all the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and their employees and encourage and foster the development of new small businesses.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 04–11462
Filed 5–18–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7788 of May 14, 2004

World Trade Week, 2004

By the President of the United States of America

A Proclamation

Participating in the world economy makes America's economy stronger. By opening new markets for American products and services, bringing lower prices and more choices to American consumers, and attracting foreign companies to invest and hire in the United States, free and fair trade helps create better jobs for American workers. During World Trade Week, we celebrate the benefits trade brings to our citizens, our economy, and to countries and people around the world.

Since World War II, the United States has led the world in advancing trade to create jobs for American workers, increase choice for consumers, and ensure that quality American goods and services are sold on every continent. Today, millions of American jobs depend on our goods and services being sold overseas, and foreign-owned companies and their suppliers employ millions of Americans here at home.

My Administration has aggressively negotiated trade agreements that slash foreign tariffs and remove the barriers to selling American goods and services around the world. Since 2001, we have entered into free trade agreements with Chile and Singapore and concluded negotiations with Australia, Morocco, the Dominican Republic, and five countries in Central America. Free trade agreement negotiations with Colombia, Ecuador, Peru, Panama, Bahrain, Thailand, and five member countries of the Southern African Customs Union are in progress or about to begin. We are also working with our neighbors in the Western Hemisphere to create a Free Trade Area of the Americas that will form the world's largest common market and improve the lives of citizens in America and these countries. By opening foreign markets to American exports and encouraging foreign countries to set up operations in the United States, all of these agreements help create more and better jobs in our Nation. They also help increase prosperity for our workers.

For American businesses and their employees to continue to outperform other countries, America must remain the best place to do business and invest capital. In addition, we must ensure that our citizens are prepared for the high-skilled jobs our economy is creating. By fostering an environment where the entrepreneurial spirit flourishes and by providing workers with the best skills and education in the world, we can maintain our country's economic leadership and help all our citizens achieve a better life.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 16 through May 22, 2004, as World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate the benefits of trade to our Nation and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 04–11463
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Federal Register

Wednesday,
May 19, 2004

Part IV

The President

Notice of May 17, 2004—Continuation of the National Emergency With Respect to Burma

Federal Register
Vol. 69, No. 97
Wednesday, May 19, 2004

Presidential Documents

Title 3—

The President

Notice of May 17, 2004

Continuation of the National Emergency With Respect to Burma

On May 20, 1997, the President issued Executive Order 13047, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq*. On July 28, 2003, I issued Executive Order 13310 taking additional steps with respect to that national emergency by putting in place an import ban required by the Burmese Freedom and Democracy Act of 2003 and prohibiting exports of financial services to Burma and the dealing in property in which certain designated Burmese persons have an interest.

Because actions and policies of the Government of Burma continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 20, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond May 20, 2004. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
May 17, 2004.

[FR Doc. 04–11476
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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*.

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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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