5–28–04 Friday
Vol. 69 No. 104 May 28, 2004

Pages 30553–30814

Federal Register

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. No. CN–03–007]

RIN 0581–AC34

Revision of User Fees for 2004 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will raise user fees for cotton producers for 2004 crop cotton classification services under the Cotton Statistics and Estimates Act. The 2003 user fee for this classification service was $1.45 per bale. This rule will raise the fee for the 2004 crop to $1.65 per bale. This fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Effective Date: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on April 26, 2004 (69 FR 22458). A 15-day comment period was provided for interested persons to respond to the proposed rule. No comments were received and no changes have been made in the provisions of the final rule.

Executive Order 12866 and Executive Order 12988T

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The increase above the 2003 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2003 user fee for classification services was $1.45 per bale; the fee for the 2004 crop would be increased to $1.65 per bale; the 2004 crop is estimated at 18,300,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2003 crop, 18,224,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2002 crop of 44.5 cents per pound, 500 pound bales of cotton are worth an average of $222 each. The user fee for classification services, $1.65 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.45 per bale during the 2003 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision. The fee does not cover the costs for development of cotton standards used in the classification of cotton.

This final rule establishes the user fee charged to producers for HVI classification at $1.65 per bale during the 2004 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2003. Therefore, the 2004 producer's user fee for classification service is based on the 2003 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Pub. L. 102–237. The 2003 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.28 per bale. An increase of 1.61 percent, or 4 cents per bale, increase due to the implicit price deflator of the gross domestic product added to the

$2.28 would result in a 2004 base fee of $2.32 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2004 crop is estimated at 17,662,245 bales. The 2004 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 35 cents per bale reduction and was subtracted from the 2004 base fee of $2.32 per bale, resulting in a fee of $1.97 per bale.

With a fee of $1.97 per bale, the projected operating reserve would be 32.37 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.97 must be reduced by 32 cents per bale, to $1.65 per bale, to provide an ending accumulated operating reserve for the fiscal year of not more than 25 percent of the projected cost of operating the program. This would establish the 2004 season fee at $1.65 per bale.

Accordingly, § 28.909, paragraph (b) is revised to reflect the increase of the HVI classification fee from $1.45 to $1.65 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale, and it would be applicable even if the same method were requested. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per, monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be increased from $1.45 to $1.65 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

■ For the reasons set forth in the preamble, 7 CFR part 28 is amended as follows:

PART 28—[AMENDED]

■ 1. The authority citation for 7 CFR part 28, subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.65 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revise to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.65 per bale.

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Dated: May 25, 2004.

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Acting Administrator, Agricultural Marketing Service.

[FR Doc. 04–12138 Filed 5–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. 2004–29]

RIN 1550–AB47

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its rules on assessments and fees. The final rule replaces examination fees for savings and loan holding companies (SLHCs) with semi-annual assessments. OTS will charge a base assessment amount, and will add up to three additional components to this base amount. These assessments are based upon a combination of factors that have proven relevant to the on- and off-site supervisory costs OTS incurs: A SLHC's asset size, its risk or complexity, its organizational form, and its condition. OTS will compute the assessments for conglomerates using this same formula, except that the risk/complexity component will be triple the risk/complexity component charged to a complex or higher risk holding company of the same asset size. OTS also has amended its rules governing the calculation of semi-annual assessments for savings associations to eliminate the alternative calculation for the asset size component.

DATES: *Effective Date:* This final rule is effective July 1, 2004.

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SUPPLEMENTARY INFORMATION:

I. Background

The Home Owners' Loan Act (HOLA) authorizes the OTS Director to assess fees against institutions that OTS supervises, including savings associations and SLHCs, to fund OTS's direct and indirect expenses as the Director deems necessary or appropriate.[1] OTS also may assess savings associations and affiliates of savings associations for the costs of conducting examinations.[2]

OTS regulations implementing this authority are found at 12 CFR part 502. Under these rules, OTS charges each savings association a semi-annual assessment, which includes a size component, a condition component, and a complexity component. In addition, OTS charges an examination fee for thrifts that have trust assets that are under the $1 billion complexity component threshold. OTS charges SLHCs and other thrift affiliates fees for investigating and examining their

[1] 12 U.S.C. 1467(k). *See also* 12 U.S.C. 1462a, 1463, 1467, 1467a.

[2] 12 U.S.C. 1467(a) and (b) and 1467a(b)(4). *See also* 12 U.S.C. 1467(d) (trust examinations of savings associations).

operations. These examination-related fees are assessed at an hourly rate for examiner time spent preparing for and conducting the examination.

II. Description of the Proposed Rule

On February 10, 2004, OTS proposed to revise the assessment rules for SLHCs and savings associations.[3] OTS proposed to eliminate most examination fees for SLHCs and instead charge semi-annual assessments. Under the proposed rule, the semi-annual SLHC assessment was made up of a base assessment amount, and up to three additional components. The three components were based on the risk or complexity and size of the SLHC's business, its organizational form, and its condition. In addition, OTS indicated that it was considering assessing certain large and complex SLHC enterprises (conglomerates) under a separate assessment procedure and solicited comments on these assessment procedures. OTS also proposed to revise the assessment procedures for savings associations by eliminating the alternative calculation for the asset size component currently available to small ''qualifying savings associations.'' OTS stated that it intended to implement these proposed changes in the July 2004 semi-annual assessment.

The comment period closed on March 26, 2004. OTS received 15 comments from eight SLHCs or representatives of SLHCs, five depository institutions, four trade associations, and the Conference of State Bank Supervisors. Several depository institutions and their SLHCs submitted joint comments. These comments are addressed below.

III. Request for Additional Rulemaking Procedures

A. Re-Proposal of the Assessments Rule

Commenters observed that OTS proposed to place many important details regarding the computation of SLHC assessments in a thrift bulletin rather than in rule text. Because the thrift bulletin was not finalized when the proposed rule was issued, some commenters argued that SLHCs did not have enough detail to understand the impact of the rule. Commenters requested that OTS treat the proposed rule as an advance notice of proposed rulemaking and re-propose a new rule providing greater specificity regarding the computation of SLHC assessments.

To obtain meaningful public participation, a notice of proposed rulemaking must fairly apprise interested persons of the issues in the rulemaking. In the proposed rule and the accompanying preamble, OTS provided a significant amount of information regarding the computation of proposed assessment amounts. Specifically, OTS:

- Provided the likely amount of the semi-annual base charge.
- Set out proposed schedules for computing the risk/complexity component for Category I and II SLHCs at all asset size levels. OTS also explained how it classifies SLHCs as Category I or II, indicated how many SLHCs currently fall in each category, and stated that any SLHC could obtain its classification by contacting its Regional Office.
- Indicated that OTS intended to assess an additional 50 percent assessment on section 10(l) SLHCs [4] under the organizational form component. OTS also requested comment on an additional adjustment under the organizational form component for SLHCs that control trust-only depository institutions, and the appropriate amount of this adjustment.
- Stated the condition component will apply to SLHCs rated ''unsatisfactory'' and proposed an additional 100 percent assessment for these SLHCs.

The preamble provided numerous examples and charts demonstrating how OTS would calculate the assessment for SLHCs with various characteristics.

OTS acknowledged that the proposed assessment amounts in the preamble were subject to change depending on the content of the final rule.[5] This alerted the public that the assessments rule, like any proposed rule, might be revised as a result of comments received in the rulemaking process.[6]

Under the circumstances, OTS was as informative as possible about potential assessments. In light of the few revisions to the computations under the final assessments rule, OTS has not materially altered the proposed computation nor revised the amount of the proposed assessment for most SLHCs. Accordingly, OTS concludes that a further round of rulemaking is not required.

Commenters argued that the proposed assessment for conglomerates was deficient because OTS did not clearly describe which SLHCs would be subject to the separate assessment procedures, or how OTS would calculate the proposed assessment for these SLHCs. Commenters encouraged OTS to review the comments, draft a more definitive proposal on this issue, and seek further public comment.

OTS agrees that the preamble was less specific with regard to the assessment for conglomerates. However, even here, OTS provided a considerable amount of information. Specifically, the preamble described conglomerates that would be subject to the assessment and included references to OTS Holding Company Handbook sections that described these entities with greater specificity; cited various computational methods that were under consideration, including a specific reference to the type of charge imposed under today's final rule (*i.e.*, a charge that is a multiple of the Category II SLHC assessment schedule); stated that the assessment for these conglomerates would be significantly in excess of the amounts prescribed for other SLHCs under the rule; and noted that OTS retained the ability to exercise its authority under 12 CFR 502.60(e) to recover extraordinary expenses related to the examination, investigation, regulation or supervision of conglomerates and their affiliates.

OTS believes that the assessment procedure for conglomerates prescribed under the final rule is a logical outgrowth of this proposal. Accordingly, OTS concludes that a further round of rulemaking is not required to finalize the rule on conglomerates.

B. Future Adjustments in Thrift Bulletins

Other commenters asserted that the proposed process for making *future* adjustments to assessments through thrift bulletins violates the APA. Commenters argued that all future changes, including revisions to the base assessment amount, the application of an organizational form component to new types of SLHCs, and changes to applicable rates under the risk/complexity component, must be subject to notice and comment rulemaking.

[3] 69 FR 6201.

[4] Section 10(l) of the HOLA permits a state savings bank (or state cooperative bank) to elect to be treated as a savings association for the purposes of regulating the holding company. By making such an election, the holding company is regulated by OTS as a SLHC for purposes of section 10 of the HOLA, rather than by the Federal Reserve Board as a bank holding company. However, another appropriate federal banking regulator and the appropriate State regulator, not OTS, continue to be the primary regulators of the subsidiary state bank or cooperative bank.

[5] *See, e.g.*, 69 FR at 6203, fn. 7.

[6] The Administrative Procedure Act (APA) does not require a new round of rulemaking whenever an agency alters a proposed rule. Indeed, a final rule *must* differ from the proposal if the record evidence warrants the change. As the D.C. Circuit has stated: ''A contrary rule [that a final rule may not change the proposed rule] would lead to the absurdity that in rule-making under the APA the agency can learn from the comments on its proposals only at the peril of starting a new procedural round of commentary.'' *International Harvester Co.* v. *Ruckelshaus,* 478 F.2d 615, 632, n. 51 (D.C. Cir. 1973).

OTS disagrees that all future changes, no matter how insignificant, must be subject to notice and comment rulemaking. However, it has made several revisions to the text of the final rule in response to these commenters. The final rule specifically:

- States that the base semi-annual assessment amount is $3,000 and permits OTS to periodically revise this amount in a thrift bulletin to reflect changes for inflation based on a readily available index, such as the Gross Domestic Product Implicit Price Deflator.
- Indicates that section 10(l) SLHCs are subject to the organizational form component, and states that the amount of the adjustment for these SLHCs is 25 percent.

The final rule on the risk/complexity component has been revised to clarify some issues, but is substantially unchanged. The final rule text continues to explain how the risk/complexity component is calculated and is accompanied by a chart that sets out the applicable asset size ranges. Like the proposed rule, the final rule does not set out the marginal rates applicable to each asset range. Rather, the final rule states that the marginal rates will be established in a thrift bulletin. As noted above, the preamble included proposed marginal rates for Category I and II SLHCs for all asset levels. OTS will charge these same marginal rates under the assessment schedules published today in the related thrift bulletin.

This is the same structure that OTS uses to compute the asset size component of the savings association semi-annual assessment. In the 11 semi-annual assessment cycles since it established the asset size component for savings associations, OTS has adjusted the rates for the asset size component only three times.[7] The three revisions did not change the basic formula that OTS uses to calculate the size component and did not materially alter the relationships between the marginal rates applicable to the various asset size categories. Rather, the adjustments merely made routine corrections and refinements of the original methodology designed solely to adjust the original marginal rate schedules to reflect inflation. All of the revisions were based on inflationary indices published by the Bureau of Labor Statistics. OTS anticipates that future adjustments to the risk/complexity component for SLHC assessments will be similar in character. However, to the extent that any future revisions significantly change the way OTS computes the risk/complexity component, OTS anticipates that it will publish the revision for notice and comment before applying the revision.

[7] *See* TB–48–17 (Dec. 1, 2000); TB–48–18 (Nov. 29, 2001); and TB–48–20 (Dec. 2, 2003).

IV. SLHC Assessments

A. Increased Charges

Most commenters observed that SLHC charges would increase substantially under the proposed rule and objected to the magnitude of the increases. Commenters cited increases for various types of SLHC that ranged from 125 percent to 1400 percent. Commenters asserted that these increases were significantly out of proportion to the examination work performed by OTS. One noted that its increase exceeded the fees charged by the thrift's external auditors. Commenters predicted that these higher fees would drive some enterprises out of business, cause some institutions to change charters, or discourage savings associations from maintaining structural flexibility by setting up SLHCs to meet their future needs. Commenters urged OTS to look more critically at cumulative costs assessed on the industry and reassess the allocation of these costs.

OTS acknowledges that the supervision charges for many SLHCs will rise under the final rule. This was an expected outcome since OTS was not fully recovering the entire cost of supervising SLHCs. OTS must maintain sufficient resources to provide quality supervisory services and must, to the extent possible, recover the cost of these resources from the appropriate regulated entities.

In the past, OTS recovered SLHC supervision costs based only on on-site examiner hours. As SLHCs have become more complex in both structure and nature of operations, OTS staff has increasingly spent more off-site time addressing supervisory issues affecting the SLHC industry as a whole, and monitoring the condition and activities of individual SLHCs. Thus, OTS's comprehensive SLHC supervision process has become much more than an on-site review of records and interaction with SLHC representatives.

Current examination fees do not reflect off-site supervisory efforts and, thus, do not capture a significant portion of the resources OTS devotes to comprehensive supervision of SLHCs. As a result, past examination charges significantly understated the amount of OTS resources engaged in SLHC supervision and, thus, did not nearly cover the actual costs of this supervision. Until now, OTS avoided imposing the costs of SLHC regulation on other regulated entities by using its reserves, improving the efficiency of its operations, and undertaking various cost-cutting measures. These measures alone no longer suffice to allow OTS to ensure that it can continue to provide quality supervision of the thrift industry, SLHCs, and other affiliates.

OTS is aware that, for some SLHCs, the percentage increases in annual assessment charges appear to be substantial. However, cost comparisons of the prior examination fee to assessments under the proposed rules ignore the significant expenses incurred by OTS in the supervision of SLHCs—expenses that must properly be assessed against SLHCs. In addition, examination time varies from year to year and simply looking at the prior examination bill as a point of comparison can distort the picture.

A few SLHCs claimed that their annual assessments would increase 1200 to 1400 percent over their current examination charges. Based on its analysis of the impact of the proposed rule, OTS has concluded that percentage increases of this scale typically occur at SLHCs with low dollar assessments, where the imposition of the base assessment ($3,000 semi-annually) significantly exceeds the prior examination hours approach. OTS recognizes that the percentage increase may be high for some, but we believe that the change in approach is warranted to accurately assess for the total cost of SLHC supervision—whether the work is performed on- or off-site. The charges reflect OTS's attempt to tailor assessments more closely to the actual costs of their supervision. The magnitude of the cited increases to a great degree underscores the fact that previous OTS charges were substantially understated vis a vis actual supervisory costs.

To mitigate the impact of the cost increases to all or a part of the industry, commenters suggested that OTS gradually phase-in the final assessments rule for all SLHCs or for certain types of SLHCs. Commenters also urged OTS to phase-in certain components of the final rule, such as the section 10(l) organizational form component. Commenters also requested that OTS grandfather existing SLHCs from assessments under all or a portion of the final rule.

While OTS cannot fully accommodate these suggestions without potentially compromising the resources needed to regulate SLHCs, it does agree that a phase-in would be appropriate. The final assessment rule will result in higher annual fees for certain SLHCs, but OTS firmly believes the final rule

provides for a fair and equitable recovery of our supervisory costs from supervised entities. OTS understands that SLHCs need the ability to budget for planned expenditures. Therefore, to mitigate the impact of these changes, OTS will phase in the final rule according to the following assessment schedule:

Semi-annual assessment billing date	Percent of final rule
July 1, 2004	25
January 1, 2005	50
July 1, 2005	100

B. Elimination of Examination Fees

Several commenters urged OTS to continue to base assessments on examiner time and to charge for both on- and off-site hours. They noted that OTS could also recover future increases to supervisory expenses by adjusting the hourly rate. Commenters acknowledged that tracking and charging for actual hours involves inefficiency and expense. However, they observed that many professions charge by the hour and do not find tracking hours overly burdensome. Commenters also suggested various alternatives. For example, one commenter urged OTS to develop formulae similar to those used by manufacturing and other companies for specified tasks.

OTS has three goals with respect to the assessments rule: (1) Keep charges as low as possible while providing the agency with the resources essential to effectively supervise a changing industry; (2) tailor charges to accurately reflect the agency's costs of supervising institutions and their affiliates; and (3) provide institutions and their affiliates with consistent and predictable assessments to facilitate financial planning.

While assessments based on actual hours would serve the first two OTS goals, such a system would fail to provide transparency and predictability to the industry regarding costs. The current system can result in sharp fluctuations or unexpected examination billings. As conditions and activities at the SLHC change from year-to-year, OTS adjusts the scope of its examinations to conduct its work in a risk-focused manner. Examiners do not spend the same amount of time at a particular SLHC during each examination. OTS believes that the recovery of supervisory costs based on regular assessments offers a measure of predictability as to the assessment amount and will aid SLHCs in their budget process.

OTS notes that, until 1989, savings associations paid fees to the Federal Home Loan Banks to cover the costs of examinations by Federal Home Loan Bank System employees. *See* 55 FR 34519, at 34520 (Aug. 23, 1990). This system was also based on a per hour charge, but was abandoned after OTS was created. Since then, OTS has assessed savings associations using a structure conceptually similar to the assessments proposed for SLHCs. Based on OTS experience with thrifts, OTS believes that the proposed assessment structure for SLHCs is practicable and viable and will serve all of the goals of this rulemaking.

By contrast, OTS is not convinced that it can use on-site and off-site hours without generating a significant number of disputes over inherently supervisory decisions regarding the amount of on- and off-site time devoted to particular SLHCs from year to year. In 2003, OTS tracked both on-site and off-site hours in the manner proposed by commenters. OTS issued a thrift bulletin stating that we would bill SLHCs directly for these on- and off-site services. Thrift Bulletin 48–19 (Sept. 23, 2003). Following the publication of Thrift Bulletin 48–19, various members of the industry contacted OTS to discuss the proposed examination charges. In addition, as bills were sent out using this approach, excessive time was devoted to explaining and defending off-site hours. OTS also conducted an analysis of off-site examination time records and collected input from staff on the process of collecting and tracking off-site examination time and properly allocating overhead associated with the supervision of SLHCs. Based on the industry and staff feedback, OTS determined that the administrative burden of collecting and billing off-site hours outweighed the cost-recovery benefit, and abandoned this cost-recovery method. OTS regional management already are asked to mediate disputes regarding the number of on-site examination hours charged in examination billings. OTS anticipates that imposing direct charges for off-site hours would generate significantly more inquiries.

Finally, OTS believes that the proposed change will better support our risk-focused examination and supervisory processes and encourage efforts to perform exam related SLHC work off premise, when possible. With SLHC assessment fees set at fixed rates based on a variety of critical factors, staff will be encouraged to conduct its SLHC supervision in the most effective and efficient manner. With fixed assessments, staff will not feel undue pressure to expand or restrict on-site examination time due to concerns about the potential examination charges.[8] Accordingly, OTS has decided to replace the current examination billing structure with the assessment rate structure included in the proposed rule.

Commenters asked OTS to clarify whether it would cease charging fees for all SLHC general examinations. For example, one commenter asked OTS to clarify whether it intends to charge for special examinations, such as information technology examinations.

Under the final rule, OTS will cease charging fees for regularly scheduled general examinations of SLHCs. OTS will continue to charge for extraordinary examinations, such as eligibility examinations conducted in connection with an application and specialty examinations, including information technology examinations. OTS may also continue to charge additional fees under 12 CFR 502.60(e) when staff is required to spend an inordinate amount of supervisory time as a result of an extraordinary event or circumstances.

Accordingly, the final rule continues to state that OTS may impose fees for examining and investigating savings association affiliates. Additionally, if OTS incurs any extraordinary expenses related to the examination, investigation, regulation, or supervision of a savings association or its affiliate, the Director may charge a fee to fund those expenses. *See* 12 CFR 502.5(c), 502.50, and 502.60(e).

C. Assessments of Specific Types of SLHCs

Commenters argued that the proposed rule did not tailor OTS charges to accurately reflect the actual cost of supervision of certain types of SLHCs. As a result, commenters asserted that these SLHCs will pay more than their fair share of OTS costs. Commenters urged OTS to specifically consider the availability of information from other state and federal regulators, and to address the application of the rules to various types of holding companies, including large, diverse SLHCs and shell SLHCs.

[8] One commenter predicted that the new process would lead to unproductive and unnecessary staff work because OTS staff would spend more time than necessary during examinations without time records to monitor the examination. OTS does not believe that the commenter's assertions are accurate. OTS has based savings association assessments on a set formula for many years. In 2003, OTS conducted its first Annual Thrift Satisfaction Survey to solicit feedback about our regulatory processes. One of the broad themes that emerged from the responses was that we have introduced many examination enhancements to improve efficiency. Nonetheless, OTS will continue to monitor examination time spent on supervisory activities for thrifts, SLHCs, affiliates, and service providers to ensure the most efficient and effective utilization of supervisory resources.

1. Shell SLHCs

Several commenters argued that the proposed rule requires shell SLHCs to pay more than their fair share of OTS costs. These commenters observed that shell SLHCs conduct few activities beyond the thrift, and that the management and boards of shell SLHCs and the subsidiary thrifts are usually identical. Commenters asserted that OTS expends little effort on the SLHC examination and reviews most SLHC activities in conjunction with the thrift safety and soundness examination. Commenters provided examples of some shell SLHC charges that would increase significantly over current examination fees, and argued that these increases would discourage institutions from anticipating future needs or maintaining structural flexibility by setting up SLHCs.

To address this issue, some commenters asked OTS to adjust the base assessment charge for shell SLHCs. Commenters asserted that this charge is contrary to the rest of the rule, which adjusts the assessment to reflect the complexity of the organization. The commenters urged OTS to eliminate the base assessment charge, or provide a negative adjustment to the base assessment under the organizational form component.

The final rule continues to impose the base assessment charge. The base charge reflects the base expense OTS incurs in supervising every holding company structure, regardless of organizational form, relative risk or complexity, or the identity of its board or management. The charge reflects OTS's estimate of the costs of conducting on- and off-site supervision of a small, low risk, noncomplex SLHC. The base assessment charge includes the costs of conducting an on-site examination using the abbreviated holding company examination program,[9] conducting off-site activities in preparation for such an examination,[10] performing off-site monitoring between examinations for such an SLHC,[11] and preparing supervisory guidance for SLHCs. OTS also recovers a portion of its operating costs, such as the cost of OTS facilities and examination support personnel allocated to these activities.[12]

Other commenters urged OTS to deduct thrift assets from consolidated SLHC assets under the risk/complexity component. These commenters noted that the operations of shell SLHCs and their subsidiary savings associations are largely identical and that OTS already has reviewed thrift operations and charged for the savings association examination.

OTS believes that the rule already takes shell SLHCs into account under the risk/complexity component and declines to make any further adjustments. OTS generally considers a SLHC to be a shell if it holds minimal debt that can be easily serviced by its own resources and engages only in limited activities (*e.g.*, the investment of cash from dividends or proceeds of stock sales in liquid interest-bearing instruments as opposed to highly leveraged instruments). These SLHCs will typically be classified as a Category I SLHC, unless the SLHC's unique circumstances warrant Category II classification.

The proposed assessment schedule included two adjustments designed to reflect the fact that non-complex low risk SLHCs require less supervisory resources. First, the proposed schedule did not charge any amount for the first $150 million of consolidated assets. As a result, the risk/complexity component for approximately 150 of the 400 Category I SLHCs is zero. Second, the marginal rates used in the Category I schedule are substantially lower than the marginal rates used in the Category II schedule. Thus, under the proposed schedules, the risk/complexity components for the remaining 250 Category I SLHCs are significantly less than the risk/complexity components for similarly sized Category II SLHCs. For example, a Category I SLHC with consolidated assets of $250 million will be charged an additional $750 above the base assessment. A Category II SLHC of the same size will be assessed an additional $4,000. OTS believes that these two adjustments take into account the characteristics of shell SLHCs under the risk/complexity component. OTS has not made further adjustments to this component to address shell SLHCs.

2. Regulation by Other Federal and State Regulators

Several commenters argued that the proposed rule ignores the functional regulatory framework developed in the Gramm-Leach-Bliley Act (GLBA), which was designed to avoid duplicative and overlapping oversight by defining and distinguishing the roles of the various regulators. Commenters asserted that, to the extent that OTS uses examination reports and other information provided by other federal and state regulators, OTS examination costs are reduced. Without an adjustment to reflect this fact, commenters claimed that the proposed rule requires these SLHCs to pay more than their fair share. A commenter noted that it is difficult to see how so much more time would be needed during the examination process, unless OTS examiners planned to duplicate some of the efforts of these regulators. Commenters urged OTS to revise the proposed rule to reflect the availability of this information, and proposed various revisions to the risk/complexity component and organizational form component.

OTS fully supports the concept of functional regulation set out in the GLBA. Since well before the GLBA, OTS has long sought to coordinate regulatory activities with relevant supervisors. Our goal is to leverage off of the work of other regulators to the maximum extent possible, while ensuring that we fully meet our statutory and regulatory responsibilities. In no way are our supervisory efforts designed to or intended to replicate the work of other responsible supervisors.

An OTS SLHC examination includes a review of the entire corporate enterprise, including the consolidated, top-tier SLHC and all subsidiaries of the SLHC. As a general rule, OTS has a broad grant of authority to examine each registered SLHC and each subsidiary of a SLHC, as the Director prescribes. However, under the GLBA, which included new provisions designed to avoid regulatory duplication, OTS must follow certain procedures when it seeks to obtain information about or examine functionally regulated subsidiaries of SLHCs. These procedures address OTS's acquisition and reliance on reports and data prepared by the entity's primary regulator and establish conditions on examining functionally regulated subsidiaries of SLHCs. The GLBA does not restrict OTS's ability to examine the SLHC.

OTS recognizes and respects the role of fellow regulators, and makes every effort to coordinate examination and supervisory efforts with other regulators. While the reports and other materials provided by functional regulators are helpful in the supervision of SLHCs, other functional regulators generally do not focus on the primary

[9] *See* Holding Company Handbook, Section 720, Abbreviated Holding Company Examination Program.

[10] This would include, for example, the costs of completing pre-examination procedures and the risk classification for a low risk, noncomplex, SLHC. See Holding Company Handbook, Section 710 Holding Company Administrative Program.

[11] These costs would include the costs to review and analyze basic reports filed by the savings association and SLHC (*e.g.*, Schedule HC of the Thrift Financial Report (TFR), the SLHC's quarterly and annual H–(b)11 reports, and relevant private sector information).

[12] Several commenters argued that the application of the base assessment amount to multiple top-tier SLHCs in certain circumstances was inappropriate. These comments are addressed below.

area of OTS's statutory responsibility—the financial and operational condition of the entire SLHC enterprise. Inherent in the OTS SLHC examination approach is the identification of significant risks, internal control weakness, risk management deficiencies or other financial or operational issues especially as they relate to the current and prospective effect that holding company enterprises have on the subsidiary insured savings association or other regulated entities in the corporate family.

OTS agrees that reports of the other functional regulators often provide helpful insights into certain aspects of SLHC operations. Furthermore, OTS does reflect the role of other regulators in determining the appropriate risk/complexity category. For example, when there is another lead consolidated regulator, OTS may classify an enterprise that is otherwise a conglomerate in Category II.[13] This decision depends on the roles and responsibilities of the lead consolidated regulator and the scope of their examination and other supervisory factors.

Nonetheless, to obtain this information, OTS examiners take extra steps to communicate and coordinate with the other regulators. Such efforts take additional time and cause OTS to incur additional expense. As a result of these efforts and in some cases the differing goals of the other regulators, OTS does not believe that these reports alone will always meaningfully reduce the effort and time expended by OTS examiners in the review of an enterprise as a whole. When they do, OTS will reflect the reduced supervisory effort required in determining the appropriate risk/complexity category. Accordingly, OTS has not revised the proposed rule since this factor is already reflected in the proposed approach.

3. Large, Diverse SLHCs

Several commenters argued that the proposed rule would assess large, diverse SLHCs more than their fair share of examination costs. Commenters noted many large diversified SLHCs are insurance companies or securities firms, and that information about their condition should be readily available from other regulators. For the reasons set forth immediately above, OTS has concluded that the risk/complexity classification adequately reflects the availability of this information and the degree to which that information contributes to fulfilling OTS's supervisory objectives for SLHCs.

Commenters also noted that large or diversified SLHCs have substantial consolidated assets. Because thrift assets will reflect only a small proportion of consolidated assets, the commenters argued that any assessment based on consolidated assets would not bear a reasonable connection to OTS examination costs.[14]

OTS is not persuaded by this argument. OTS's supervisory approach is designed to evaluate the condition of the entire holding company enterprise so that OTS may ensure that the thrift and other regulated entities will not be harmed by the affiliation. To realistically evaluate the risks presented by a SLHC, OTS must understand the activities and operations of the holding company enterprise. OTS has found that the costs of making these types of determinations increase as the size of the holding company enterprise increases. To reflect this fact, OTS bases the amount of each SLHC assessment, in part, on total consolidated holding company assets under the risk/complexity component. This component recognizes that there are economies of scale in such analyses, particularly in the supervision of larger structures. Accordingly, the marginal rates established under the proposed schedules decline significantly as asset size increases.

D. Computation of Assessment

For most SLHCs, the method for computing assessment under the final rule is substantially unchanged from the proposal. OTS will charge semi-annual assessments on the responsible SLHCs in each holding company structure. This semi-annual SLHC assessment will be made up of a base assessment amount and up to three additional components. The three components are based on the risk or complexity of the SLHC's business, its organizational form, and its condition. OTS will compute the assessments for conglomerates using this same formula, except that the risk/complexity component will be triple the risk/complexity component for a complex or higher risk SLHC of the same asset size. The final rule and comments received on the proposed computations are discussed below.

1. Responsible SLHCs—§ 502.26(b)(1)

In most cases, OTS performs only one examination of each SLHC structure, even though the examination may include a review of multiple tiers of direct and indirect thrift ownership. Because our SLHC examination and supervisory efforts consider the entire holding company structure, OTS did not propose to assess intermediate-level SLHCs. Instead, OTS proposed to assess the top-tier SLHCs in every SLHC structure. The top-tier SLHC was defined as the highest level of ownership by a registered SLHC in the holding company structure.[15]

The preamble noted that two or more SLHCs may own a controlling interest in a savings association. This occurs, for example, where two companies each directly owns 50 percent of the savings association's voting stock. Where there are two or more distinct controlling interests in a savings association, OTS examines each ownership structure separately. Under these circumstances, the preamble indicated that OTS would impose a semi-annual assessment on the top-tier SLHC in each ownership path.

Commenters urged OTS to take into account unique organizational structures in determining which entity in the chain of ownership should be assessed. Some commenters argued that OTS should assess only one SLHC in each holding company structure. One commenter, for example, reported that its holding company structure includes multiple top-tier SLHCs and asserted that the proposed rule would result in multiple assessments even though all financial reporting is consolidated and all operations dovetail.

In response to an OTS request for comment, several commenters argued that OTS should not assess multiple top-tier family trusts that own controlling interests in intermediate-tier SLHCs. These commenters argued that

[13] *See* discussion of European Union regulation at Section III.D.4. of this preamble.

[14] Commenters urged various revisions to the proposed fee structure. For example, commenters urged OTS to assess solely on examiner time, to revise the risk/complexity component to eliminate the use of consolidated assets, or assess large diversified SLHCs based on formulae for specified tasks similar to those used by manufacturing and other companies.

[15] As a related matter, one commenter observed that some holding company structures include industrial loan companies (ILC) that are affiliated with savings associations. The commenter presented an example where a holding company directly owns both a savings association and an ILC. The ILC has no direct or indirect interest in the savings association. The commenter asked for clarification whether OTS intended to assert supervisory jurisdiction over the ILC.

A company that owns or controls a savings association and an ILC is a SLHC subject to OTS jurisdiction under 12 U.S.C. 1467a, unless it also owns a bank. (In this latter case, the company would be a bank holding company subject to the jurisdiction of the FRB. 12 U.S.C. 1843.) An ILC owned by a SLHC would remain subject to the primary supervisory jurisdiction of FDIC and the state regulator. The OTS assessments rule has no impact on the ILC except that the ILC assets would be included in the SLHC consolidated assets and would increase the amount of the SLHC assessment.

the majority of OTS supervisory efforts in such structures are expended in the review of the operations of the intermediate-tier SLHC. By contrast, the top-tier family trusts usually are shells that conduct no activities and that require little OTS oversight.

Under the final rule, OTS has retained the ability to address the issues raised by the comments on a case-by-case basis. The final rule now uses the term responsible holding company to indicate which SLHC will be subject to the assessment. The responsible holding company generally is the registered holding company at the highest level of ownership in a holding company structure, but OTS may designate another SLHC in the holding company structure for assessment.

OTS anticipates that it will designate another SLHC within an ownership structure only in rare instances. For example, OTS may designate an intermediate tier SLHC in a holding company structure where there are multiple top-tier SLHCs that are closely held family trusts, the trusts conduct no activities and essentially hold only passive investments in the intermediate-tier SLHC, and thrift assets are not consolidated onto the balance sheet of the trusts. Under these instances, substantially all of OTS supervisory efforts will be directed at the intermediate tier SLHC. If OTS were to assess each family trust in such a structure, it would, in essence, recover a base assessment amount for each trust. As noted above, the base assessment amount was designed to reflect the base expense incurred by OTS with respect to every holding company structure. Under such circumstances, the combined charges to multiple family trusts would bear little relationship to actual OTS examination, supervision, or regulatory efforts.

In addition, OTS has found that some top-tier SLHCs are organized outside of the United States and do not use U.S. GAAP or U.S. SAP [16] to compute their total assets. By contrast, a lower-tier SLHC may be organized in the United States and may use U.S. GAAP or U.S. SAP. When such companies have a foreign regulator that performs a review equivalent to OTS's approach, a lower or intermediate tier's reported assets may more accurately reflect OTS's costs of supervising the structure.

Accordingly, the final rule indicates that OTS may designate an intermediate-tier SLHC as the responsible holding company, if the assessment of this entity would more accurately reflect OTS's costs of supervision and there are multiple top-tier holding companies in the holding company structure, the top-tier holding company is organized outside of the United States and is subject to the consolidated review of a foreign regulator, or other circumstances indicate that the assessment of the top-tier holding company would be inappropriate.

2. Base Assessment Amount—§ 502.26(a)(1)

OTS proposed to include a base assessment charge in each SLHC assessment. The base assessment charge includes the costs of conducting an on-site examination using the abbreviated holding company examination program, conducting off-site activities in preparation for such an examination, performing off-site monitoring between examinations for such SLHCs, and preparing general SLHC supervisory guidance. OTS also recovers a portion of its operating costs, such as the cost of OTS facilities and examination support personnel allocated to these activities. The proposed rule indicated that OTS would establish the amount of the base assessment component in a thrift bulletin.

OTS initially estimated that the base assessment charge would be $3,000 for each semi-annual assessment or $6,000 per year. As discussed above, OTS has revised the final rule to include the amount of the base assessment in the text of the rule and to permit OTS to periodically revise this amount in a thrift bulletin to reflect changes for inflation based on an index, such as the Gross Domestic Product Implicit Price Deflator.

3. Risk/Complexity Component—§ 502.27

The first component of the semi-annual SLHC assessment is the risk/complexity component. OTS proposed to compute this component using separate schedules that set out charges based on OTS holding company risk/complexity classifications and total consolidated holding company assets.

Several commenters argued that this component improperly linked complexity and risk. These commenters asserted that the proposed rule did not adequately explain how complexity impacts on risk or oversimplified the relationship between risk and complexity.

While the proposed rule described this component as the ''risk and complexity component,'' OTS did not assert that there is a link between complexity of an SLHC and its overall risk profile. Rather, these two matters are separate, albeit sometimes overlapping, considerations. The purpose of the holding company risk/complexity categories is to identify those SLHCs that require a more intensive supervisory approach. Such supervision may consume more OTS resources either if the SLHC has a complex structure or presents a high risk profile. Stated differently, OTS will classify an SLHC as Category I only if its structure is not complex and it has a low risk profile. If an SLHC has a complex structure or a high risk profile complex, OTS will assign the SLHC to Category II.

a. Risk/complexity classification.

Commenters argued that the proposed rule did not adequately explain how OTS classifies SLHCs as Category I or II. The proposed rule specifically stated that holding company risk/complexity classifications reflect OTS's assessment of five factors: (1) The SLHC's financial condition; (2) financial independence; (3) operational independence; (4) reputational risk; and (5) management experience. The proposed rule text also referred readers to the OTS Holding Company Handbook, which fully describes OTS's risk/complexity classification methods.[17]

Because the risk/complexity classification system previously was used only for internal purposes, OTS provided additional information regarding the application of this system. Specifically, OTS reported that approximately 80 percent of SLHCs were classified as Category I when the proposed rule was published,[18] and indicated that regional staff would inform individual SLHCs of their risk/complexity classification upon request. Accordingly, OTS believes that the proposed rule adequately described the proposed risk/complexity classification system and its application.

Several commenters asked for guidance regarding OTS's application of various aspects of the risk/complexity classification system,[19] especially how

[16] *See* discussion at Section IV.D.3.b., below for a discussion of SAP.

[17] Holding Company Handbook, Section 100, Supervisory Approach, and Section 710, Administrative Program.

[18] A commenter argued that OTS should not designate a specific number or percentage of SLHCs as Category I or II. The statement in the preamble merely reflected OTS's current assessment of existing SLHCs. OTS has no preset notions regarding what number or percentage of SLHCs should fall in each category. Rather, OTS assesses the risk imposed by each SLHC and the level of oversight required based solely on the particular characteristics of the company.

[19] For example, one commenter observed that a simple shell SLHC could conclude that it is complex, because it would fail the financial and operational independence components of the classification system. As described in the OTS

OTS applies those aspects of the classification system that require subjective judgment.

A certain amount of subjective judgment is inherent in assigning an SLHC to a risk/complexity category. OTS must make considered decisions regarding the current and prospective risks posed by an SLHC in its evaluation of each factor and in its overall assignment of a category. These supervisory judgments simply cannot be reduced to a precise set of hard and fast rules, since an individual SLHC may present particularly egregious or mitigating characteristics that could not be reflected in such a mathematical formula.[20]

The proposed rule text listed the factors that OTS considers when assigning SLHCs to Category I or II. In addition, the preamble set out various considerations that guided OTS's assessment of each of these factors.[21] These considerations were derived from the classification checklist that provides guidelines for staff to use in determining the appropriate classification.[22] The checklist is set up in a series of yes and no questions, and is designed so that the more ''yes'' responses that are assigned, the more indicative that the SLHC is high risk or complex.[23] The risk/complexity classification system has been used internally for over two years. OTS staff has had time to understand the approach and review all SLHCs using the classification criteria. Senior management in the Regional Offices and in Washington review these classifications to ensure accuracy and consistent classification of similar SLHCs. In addition, as with other supervisory determinations, SLHCs may appeal their holding company classification as described further in section VI. of this preamble.

One commenter urged OTS to base all classifications solely on actual performance, as determined by examination ratings. OTS has not made this change. The OTS risk/complexity classification system distinguishes low risk or noncomplex SLHCs from SLHCs that have complex operations or exhibit a higher risk profile. The purpose of this system is to identify those SLHCs that will require more OTS resources. Under the examination rating system, many Category II SLHCs will receive above average or satisfactory ratings because they effectively manage their higher risks and because the complexity of their organization does not raise supervisory issues. Notwithstanding the assigned rating, the examination and continuing supervision of Category II SLHCs will consume significant OTS resources, which would not be recovered if the classification were based solely on examination ratings. While OTS agrees that an unsatisfactorily rated SLHC, in any category, will also consume greater supervisory resources, OTS believes that it has adequately considered these issues under the condition component.[24]

Finally, one commenter alleged that the proposed rule is contrary to ongoing OTS efforts to reduce regulatory burden on the industry because SLHCs will incur costs to clarify their category. The assessment rule does not impose any classification burdens on SLHCs. Instead, the rule requires OTS to keep all SLHCs apprised of their current category. Specifically, the rule states that OTS will use the most recent risk/complexity classification assigned by OTS of which the SLHC has been notified in writing before an assessment due date. An SLHC's classification is ''unpublished OTS information,'' which remains the property of OTS following the notification. An SLHC may not disclose its risk/complexity classification, except as permitted under 12 CFR 510.5.

b. Use of consolidated assets.

Several commenters objected to a charge that is based upon a consolidated holding company's assets. As discussed above, some commenters argued that using total consolidated assets will unfairly burden large or diversified SLHCs. Other commenters noted that consolidated SLHC assets include the subsidiary savings association's assets, which are already assessed in the semi-annual thrift assessment. To eliminate this ''double-counting,'' commenters urged OTS to deduct thrift assets from the consolidated SLHC assets.

The final rule continues to use consolidated assets. In OTS's experience, there is a direct correlation between the size of the responsible SLHC and the resources required to properly supervise the holding company structure. OTS does not agree that the final rule inappropriately double counts thrift assets. The risk/complexity component schedules do not assess any charge for the first $150 million of assets for Category I SLHCs. For all SLHCs, the marginal rates in the schedules are a small fraction of the marginal rates applicable to savings associations under the asset size component of their assessment. For example, the marginal rate applicable to an SLHC at $1 billion in consolidated holding company assets is 0.0000005 (Category I SLHC) and 0.000002250 (Category II SLHC). By contrast, the marginal rate for a savings association beginning with $1 billion in assets is .00007142.

The proposed rule defined consolidated holding company assets as the total assets reported on Schedule HC of the TFR. If Schedule HC is not available, OTS indicated that it would use total assets reported on financial statements filed with the H–(b)11 Annual/Current Report.

One insurance company observed that all SLHCs do not prepare consolidated financial statements in accordance with GAAP. The commenter noted that non-public insurance companies prepare financial statements only under SAP, which require the use of the equity method for subsidiaries and do not require consolidated statements. The commenter encouraged OTS to accept data from these financial statements for the purposes of the assessments rule.

SLHCs that underwrite insurance must file financial statements with state insurance departments using SAP. While many of these insurance underwriters are publicly traded and must also prepare and file GAAP statements with the SEC, mutual or closely held insurance underwriters typically prepare only SAP statements. While there are major differences

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Holding Company Handbook and the preamble to the proposed rule, OTS reviews whether the subsidiary savings association and other affiliates that are regulated financial entities are financially or operationally dependent on the SLHC. The final rule text clarifies this matter at 12 CFR 502.27(b).

[20] Moreover, under the OTS holding company classification system, a negative finding with regard to one factor may be sufficient to place an SLHC in Category II, or may have no impact on the overall classification. For example, if an SLHC's financial condition is such that it there is a greater incentive to try and boost earnings or cash flow from the thrift, OTS may place the SLHC in Category II regardless of its determinations regarding other factors.

[21] *See* 69 FR at 6203–04.

[22] *See* Holding Company Handbook, Section 710, Holding Company Administrative Program, pp. 5–10.

[23] A commenter specifically recommended placing large complex organizations with debt ratings in the two highest ratings categories in Category I. The commenter asserted that OTS examiners consider downgrades in debt ratings, but do not consider when an SLHC receives a high debt rating from a major ratings agency. For insurance companies, the commenter asserted that the highest claims paying rating is a good indication of financial strength. OTS agrees that positive factors should be considered. OTS's beginning presumption in the application of the checklist is that an SLHC is an Category I, unless a pattern of indicators of higher risk (*e.g.*, a significant downgrade in debt ratings) or complexity are present.

[24] One commenter suggested that OTS should adjust the risk/complexity component or organizational form component to address whether a company is a private, public, or mutual organization. In OTS's experience, these factors do not appreciably affect the amount of OTS resources devoted to the supervision of SLHCs. Accordingly, the final rule does not reflect these factors.

between GAAP and SAP,[25] OTS does not believe that these differences will result in significantly different assessments under the final rule. OTS believes that the costs of preparing a separate set of GAAP financial statements solely for the purposes of the assessments rule would impose unnecessary expenses on these SLHCs and would be contrary to OTS's ongoing regulatory burden reduction efforts.

It is not necessary to revise the rule to specifically permit the use of SAP statements. The rule defines total consolidated assets as the total assets as reported on the TFR or the financial statements filed with the H–(b)11 Annual/Current Report. The instructions to Schedule HC of the TFR permits savings associations to submit data for holding companies based on SAP financial statements if the SLHC is an insurance company and does not prepare financial statements for external use in conformity with GAAP. The H–(b)11 Annual/Current Report also permits SAP financial statements under these circumstances.

c. Schedules for Category I and II SLHCs.

The preamble to the proposed rule included charts indicating the applicable marginal rates under the risk/complexity component for Category I and II SLHCs with consolidated assets of varying levels. The rates OTS will use for the July 2004 semi-annual assessment are the same. These rates are set out in a thrift bulletin that has been issued simultaneously with this final rule and is available on OTS's web site.

4. Conglomerates (Category III) [26]

The proposed rule indicated that OTS intended to assess conglomerates under separate assessment procedures, and requested comment on various approaches. In this final rule, OTS has decided to compute the assessments for conglomerates using this same formula, except that the risk/complexity component will be triple the risk/complexity component of a Category II SLHC of the same asset size. Commenters raised the following issues with respect to conglomerates.

a. Definition of conglomerate.

Several commenters argued that OTS failed to clearly describe which SLHCs would be subject to the conglomerate assessment procedures. The preamble to the proposed rule described conglomerates as a limited, select number of large and particularly complex enterprises that are made up of a number of different companies, or legal entities that operate in diversified fields. Unlike traditional SLHCs, these conglomerates are often highly integrated and are managed with less regard for separate corporate existence and with more focus on product lines or geographic areas. OTS examines and supervises these SLHCs along functional or centralized lines in order to match the SLHC's business practices. OTS's supervision of these entities often involves increased planning and off-site monitoring; a more formalized supervisory process that focuses OTS's efforts on major risk areas and evaluates the enterprise across business lines; and substantial coordination with other domestic and foreign regulators. *See* Holding Company Handbook, Section 940, Large and Complex Enterprises (Conglomerates).

OTS believes that this description from the preamble sufficiently describes conglomerates that may be subject to the final rule. In the final rule, OTS has refined this description and included a definition of conglomerate. Specifically, the final rule states that a conglomerate is a SLHC that: (1) Is one of the most complex or highest risk holding companies under the holding company risk/complexity classification system (*i.e.,* is significantly more complex or higher risk than a holding company enterprise classified as Category II); (2) is made up of a number of different companies or legal enterprises that offer products from more than one financial sector (*e.g.,* insurance, securities and banking) or operate in diversified fields; and (3) generally manages these companies and enterprises along functional lines, rather than as separate legal entities. These SLHC structures are examined under the procedures set forth in OTS Holding Company Handbook, Section 940.

One commenter urged OTS to specifically address complex internationally active organizations that fall within the definition of conglomerates in the European Union (EU) Directive issued December 16, 2002. This EU Directive defines a conglomerate as a group of companies under common control that engage predominantly in financial activities (banking, insurance, and securities). Conglomerates must have a significant interest in insurance and at least one other financial activity (banking or securities) to fall within the scope of the EU Directive. In addition, the ratio of aggregate assets of all financial sector entities to total consolidated assets of the conglomerate should exceed 40 percent.

The EU is seeking to ensure that financial conglomerates domiciled outside EU member countries are subject to an equivalent level of supervision by foreign supervisors. As the consolidated supervisor of a number of financial conglomerates active in the EU, OTS is seeking equivalency status under the EU Directive. The EU has not yet determined whether OTS, or any United States regulator, will be recognized as an equivalent regulator, and decisions are not expected until later this year. Until such recognition is granted or denied, OTS cannot predict the level of supervisory activity that may be required for any SLHC that meets the EU definition and believes that it may be premature to specifically include all of these entities as conglomerates for the purposes of this rule. OTS may revisit this issue once the EU issues its determinations.

One commenter feared that SLHCs will incur costs to clarify whether they are conglomerates within the scope of the rule and that the imposition of these costs would be contrary to ongoing OTS efforts to reduce regulatory burden on the industry. OTS currently classifies fewer than five SLHCs as conglomerates. These organizations are aware of their classification as conglomerates. Nonetheless, the final rule ensures that no SLHC will be subject to undue regulatory burden. The final rule specifically states that OTS will notify a SLHC in writing of its risk/complexity classification before an assessment's due date.

b. Computation of assessment.

To ensure that the costs of supervision for conglomerates are not subsidized by other SLHCs, the preamble stated that OTS would assess conglomerates under separate assessment procedures. OTS stated that it was considering various approaches to calculating assessments for complex conglomerates including: (1) A set charge or flat fee; (2) a variable charge that is based upon a percentage of the total holding company assets or some other financial measure (OTS indicated that the applicable percentage may vary as the size of holding company assets (or other financial measure) increases or may represent a multiple of the Category II SLHC assessment schedule); (3) an additional charge for complex multinational conglomerates with activities that require a high degree of coordination with other regulators (see *e.g.,* Holding Company Handbook, Section 940A, Financial Activities in the European Union); or (4) a fee structure that combines some of the

[25] These differences are described in Holding Company Handbook, Section 930, Insurance Holding Companies, Appendix B, State Regulation.

[26] OTS has decided to refer to conglomerates as a new category. Thus, conglomerates are considered Category III.

elements listed above. The agency requested comment on these possible calculations and any alternative methods for calculating semi-annual assessments for complex conglomerates.

Few commenters specifically addressed the assessment formulae. Commenters generally restated arguments, addressed above, promoting the use of actual examiner hours, discouraging reliance on consolidated assets for large SLHCs, and promoting adjustments to reflect the availability of information from state, federal, and international regulators.

OTS selected one of the methods suggested in the preamble of the proposed rule. Under the final rule, OTS will base conglomerate assessments on a multiple of the Category II SLHC assessment. Specifically, OTS will compute the assessments for conglomerates using a risk/complexity component that is triple the risk/complexity component of a Category II SLHC of the same asset size. OTS believes that it is appropriate to assess a multiple of the Category II SLHC risk/complexity component because the examination and regulation of conglomerates consume a disproportionate amount of agency resources vis a vis other SLHCs. Conglomerates are composed of a number of different companies and enterprises that operate in diversified fields and are managed on functional lines. As a result, conclusions based on the oversight of individual entities within the conglomerate may be incomplete unless viewed in the context of other related entities or centralized functions.

To match these business practices, OTS reviews conglomerate operations along functional or centralized lines. Such supervision requires OTS to analyze more areas than it addresses with respect to the typical Category II SLHCs. For example, OTS must understand very complex organizational structures, review a broader scope of intra-group relationships and transactions, address risk concentrations across company lines, and analyze group-wide capital adequacy, including capital adequacy relative to the needs of each major business sector and the parent company's own capital adequacy. Moreover, because of the diversity and complexity of the businesses in which these conglomerates engage, often unregulated, these SLHCs are more likely to present OTS with novel legal and policy issues that require the attention of highly experienced regulatory personnel with specialized knowledge and intensive review by senior management within OTS. In addition, as the consolidated regulator of a conglomerate, OTS must coordinate closely with all interested regulators, which may include foreign financial regulators.

To reflect this consumption of a greater proportion of OTS resources, OTS will calculate the semi-annual assessment for a conglomerate at triple the risk/complexity component for a Category II SLHC of the same asset size. However, OTS will closely monitor the supervisory resources allocated to conglomerate supervision and may bill individual conglomerates for extraordinary expenses in instances where the cost of OTS's supervisory efforts significantly exceed the conglomerate assessment calculated under this rule.

One commenter observed that OTS has expended substantial regulatory effort seeking equivalency determinations from the EU as the consolidated regulator for certain large internationally active conglomerates. The commenter argued that OTS must ensure that these internationally active conglomerates bear these costs. Another commenter urged OTS to adjust the assessment imposed on conglomerates whenever the enterprise conducts activities in the EU.

OTS current practice is to directly recover the costs of its efforts before the EU from the SLHC for which it seeks recognition as an equivalent regulator. See 12 CFR 502.60(e), which permits OTS to recover extraordinary expenses related to the examination, investigation, regulation, or supervision of savings associations and their affiliates. Rather than attempt to craft an adjustment that would apply to all semi-annual assessments to account for extraordinary, nonrecurring events that impose costs beyond OTS supervisory expectations, OTS believes that it is more appropriate to continue to recover these expenses on a case-by-case basis.

5. Organizational Form Component—§ 502.28

OTS-regulated SLHCs may take a variety of organizational forms, including stock holding companies, mutual holding companies, and trust holding companies. For example, OTS regulates certain holding companies under section 10(l) of the HOLA. In addition, certain SLHCs own thrifts that operate as trust-only institutions and do not accept insured deposits from the public.

To recognize that OTS may incur different supervisory costs to properly supervise SLHCs with particular organizational forms, the proposed rule permitted OTS to modify the amount of the assessment charged by applying an organizational form component. The amount of the organizational form component was computed by adding the base assessment to the risk/complexity component, and multiplying this total by a factor (positive or negative) established for the particular organizational form.

a. Section 10(l) SLHCs.

OTS indicated that it was considering applying a 50 percent increase for section 10(l) SLHCs. Several commenters opposed this adjustment. Commenters questioned whether examinations of section 10(l) SLHCs are more burdensome since the Federal Deposit Insurance Corporation (FDIC) and state regulators examine these institutions and provide a great deal of information to OTS. Commenters urged OTS to rely to the fullest extent possible on the primary federal and state regulators to provide supervisory information to evaluate section 10(l) SLHCs, and to work closely with these regulators to expand examination and information sharing protocols. Commenters asserted that these steps would eliminate any need for a section 10(l) SLHC charge.

OTS regulation of section 10(l) holding companies presents many challenges. OTS's primary regulatory goal for section 10(l) holding companies is the same as its goal for SLHCs—to understand how holding company operations may affect the operations of the subsidiary depository institution. When OTS examines a SLHC that controls a savings association, it already has a thorough knowledge of thrift operations because it has examined the thrift. As a result, OTS can focus its primary efforts on understanding the operations of the SLHC. When it undertakes the examination of a section 10(l) holding company, however, OTS has little direct information on the operations of the state subsidiary depository institution and must undertake additional steps to understand those operations.

As commenters point out, a great deal of information about the subsidiary depository institution is available to OTS from other regulators. OTS relies to the fullest extent possible on state regulators and FDIC to provide relevant supervisory information needed to evaluate the depository institution. While the information provided by state and federal regulators includes helpful information regarding the operations of the subsidiary institution, OTS must take additional steps—steps that are not required with respect to SLHCs with only savings association subsidiaries—

to come to a complete understanding of the depository institution's operations. For example, OTS must obtain information from other regulators, review and analyze this information, consult with these regulators regarding areas of concern, and formulate joint strategies where corrective action is necessary. OTS continues to believe that an adjustment under the organizational form component is necessary to account for these additional activities.[27]

Commenters asserted that the proposed 50 percent increase was excessive. These commenters suggested that OTS reduce the multipliers to 15 or 20 percent. OTS has reconsidered the proposed amount of the additional assessment and has reduced the size of the organizational form component for section 10(l) SLHCs to 25 percent. OTS believes that this amount more adequately reflects the additional efforts that it must undertake with respect to these entities.

The proposed rule permitted OTS to establish the amount of the factor (positive or negative) applicable to particular organizational forms in a thrift bulletin. For the reasons set out above, OTS has revised the final rule to specifically state that OTS will apply the organizational form component to section 10(l) SLHCs, and will compute the assessment for section 10(l) SLHCs by adding the base assessment to the risk/complexity component, and multiplying this amount times 125 percent.

b. SLHCs that control trust-only institutions.

OTS specifically requested comments on whether it should include a negative adjustment under the organizational form component for SLHCs that control trust-only savings associations that do not accept insured deposits from the public. Several commenters supported this change. These commenters argued assessments should be lower because these SLHCs typically are: (1) Insurance companies and securities firms that are subject to significant regulation by the states, the SEC, and other regulatory authorities; and (2) large, diversified SLHCs whose assessments are based on consolidated assets and may already be overstated. For the reasons set forth above, OTS has concluded that it is not necessary to adjust SLHC assessments to reflect these two factors.

Commenters also observed that trust-only institutions do not pose the same risks, complexity, or public policy concerns as other insured depository institutions. The primary objective of the SLHC examination is to examine the areas of the SLHC enterprise that pose risks to the thrift subsidiary. Even where a thrift has virtually no insured deposits, making the prospect of a loss to the insurance fund unlikely, OTS examiners still review all relevant SLHC operations. For example, examiners must review whether the enterprise is operated in a manner that the thrift can survive the collapse of its parent. Because the possible loss to the insurance fund does not affect the scope of the SLHC examination, the final rule does not include a negative adjustment for SLHCs that hold trust-only institutions. Accordingly, OTS does not believe that additional adjustments are necessary to account for these SLHCs.

6. Condition Component—§ 502.29

OTS proposed to charge a condition component if the most recent examination rating assigned to the top-tier SLHC (or the most recent examination rating assigned to any SLHC directly or indirectly controlled by the top-tier SLHC) was ''unsatisfactory.'' The proposed amount of the condition component was 100 percent of the sum of the base assessment, risk/complexity component, and organizational form component. OTS received no comments on this aspect of the proposed rule.[28] This component is adopted with only minor changes to clarify the rule and to reflect changes to terminology.

E. Payment and Collection of Assessments—§§ 502.30–502.45

OTS proposed to bill SLHCs using the same procedures it uses to bill the semi-annual assessments from savings associations. No commenters addressed the proposed procedures. The proposed procedures are adopted without change.

V. Savings Association Assessments

Under part 502, OTS charges each savings association a semi-annual assessment. OTS determines the semi-annual assessment totaling three components:

- An asset size component. OTS applies an assessment rate to the total asset size of the institution, as reported on the TFR. OTS currently provides a reduced assessment for certain qualifying savings associations under an alternate asset size component. To be eligible for this calculation, a savings association must have been a savings association as of January 1, 1999, and its total assets must not exceed $100 million at the end of the current or any previous quarter. The asset size component for qualifying thrifts is calculated under pre-1998 assessment tables.
- A condition component based on the thrift's composite rating in its most recent safety and soundness examination.
- A complexity component applied to trust assets administered by the thrift, recourse obligations and direct credit substitutes held by the thrift, and loans serviced by the thrift for others.

OTS proposed to eliminate the reduced assessment for qualifying savings associations under the alternative asset size component. Commenters generally supported this change, but suggested modifications. Several commenters urged OTS to ease the regulatory burden on qualifying savings associations by phasing in the higher rates over time.

OTS adopted the alternative asset size component in 1998. At that time, it was concerned that the asset size component could impose undue burdens on small savings associations that might not be in a position to absorb the increased costs. Qualifying savings associations have now had the benefit of the alternative calculation through 11 semi-annual assessment cycles. OTS believes that this time period has provided sufficient protection to small institutions. In light of the extra burdens that have been imposed on non-qualifying savings association through these 11 cycles,[29] OTS does not believe that it is equitable to extend the adjustment period with an additional phase-in period.

Other commenters urged OTS to retain the alternative asset size component for qualifying trust-only savings associations. These commenters noted that these thrifts are already subject to a complexity component for trust assets. Therefore, commenters asserted that other savings associations do not carry an additional costs burden for qualifying trust-only savings associations.

[27] OTS is also responsible for ensuring that the state subsidiary depository institution complies with a number of requirements applicable under section 10 of the HOLA. For example, a state savings bank (or a cooperative bank) that is deemed to be a savings association for purposes of section 10 of the HOLA must comply with section 10(d) of the HOLA, which subjects it to additional transactions with affiliate restrictions under section 11 of the HOLA. 12 U.S.C. 1468. In addition, section 10(f) of the HOLA requires the subsidiary insured institution to file advance notices of dividend declarations with OTS. OTS must also ensure that the state savings bank (or a cooperative bank) meets the requirements of a qualified thrift lender. *See* 12 U.S.C. 1467a(l)(2).

[28] As a related matter, some commenters suggested that OTS include adjustments under the organizational form component to reflect SLHC examination ratings. OTS believes that this issue is adequately addressed under the condition component.

[29] These burdens were discussed in the proposed rule at 69 FR at 6207.

Trust assets administered by a savings association are not included as assets on the balance sheet of the thrift. As a result, the asset size component of the thrift semi-annual assessment does not address OTS supervisory efforts expended in the review of these assets. Rather, OTS recovers the costs of supervising savings associations that administer trust assets in one of two ways. For savings associations that administer more than $1 billion of trust assets, OTS collects additional amounts under the complexity component of the semi-annual thrift assessment.[30] For savings associations that administer trust assets of $1 billion or less, OTS collects an examination fee, which is based on examiner hours.[31] Since neither the asset size component nor the alternative asset size component were designed to recover the costs related to the review of trust activities, OTS does not agree that qualifying savings associations administering trust assets carry additional costs relative to their costs of supervision, and has not retained the alternative size component for these thrifts.

VI. Review and Appeal of Assessments

One commenter urged OTS to outline the avenues of review and appeal of assessments and the component elements of assessments. OTS intends to address review and appeal of assessments under the procedures set out in TB 68—Supervisory Review, Appeal and Reconsideration Process and Ombudsman Matters (July 15, 1996). Thrift Bulletin 68 describes an existing process for review and appeal of OTS supervisory decisions and examination findings. While on its face this thrift bulletin states that it applies to savings association appeals, OTS has applied these processes to SLHC appeals of other supervisory issues. OTS intends to apply these processes to appeals of such supervisory determinations as the categorization of a SLHC as Category I or II or a conglomerate and the assignment of examination ratings and is clarifying TB 68 accordingly. OTS will not entertain any requests for refund, reduction or proration of assessments, other than for computational errors.[32] While OTS will address computational errors in assessments through these procedures, it anticipates that most errors will first be addressed through informal contacts with the agency.

[30] 12 CFR 502.25(a)(1).

[31] 12 CFR 502.50(a).

[32] *See* 12 CFR 502.40(a).

VII. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VIII. Regulatory Flexibility Act Analysis

Under section 605(b) of the Regulatory Flexibility Act of 1980,[33] OTS has evaluated the impact that the final rule will have on small businesses, small organizations, and small governmental jurisdictions. OTS published an initial regulatory flexibility analysis (IRFA) with the proposed rule. No commenters addressed the IRFA. Accordingly, OTS has prepared the following final regulatory flexibility analysis (FRFA).

A. Legal Basis for the Rule; Objectives of the Rule

The HOLA authorizes the Director to assess fees against savings associations and holding companies to fund OTS's direct and indirect expenses as the Director deems necessary or appropriate.[34] OTS also may assess savings associations and affiliates of savings associations for the costs of conducting examinations.[35]

OTS regulations implementing this authority are located at 12 CFR part 502. Under these rules, OTS currently charges each savings association a semi-annual assessment, which includes a size component, a condition component, and a complexity component. In addition, OTS charges an examination fee for thrifts that have trust assets that are under the $1 billion complexity component threshold. OTS also charges SLHCs and other thrift affiliates fees for investigating and examining their operations. These examination-related fees are assessed at an hourly rate for examiner time spent preparing for and conducting the examination.

The final rule seeks to more accurately apportion the cost of OTS supervision among savings associations, SLHCs, and other affiliates. The agency has three primary goals: (1) Keep charges as low as possible while providing the agency with the resources essential to effectively supervise a changing industry; (2) tailor its charges to accurately reflect the agency's costs of supervising institutions and their affiliates; and (3) provide institutions and their affiliates with consistent and predictable assessments to facilitate financial planning.

[33] 5 U.S.C. 605(b).

[34] 12 U.S.C. 1467(k). *See also* 12 U.S.C. 1462a, 1463, 1467, 1467a.

[35] 12 U.S.C. 1467(a) and (b) and 1467a(b)(4). *See also* 12 U.S.C. 1467(d) (trust examinations of savings associations).

B. Impact of the Rule

The final rule affects small savings associations and small SLHCs. It does not affect other small businesses, small organizations, or small governmental jurisdictions. OTS addresses the impact of the rule on small savings associations and small SLHCs below. OTS has considered various alternatives to the final rule to reduce the impact of the rule on small savings associations and small SLHCs. These alternatives are also discussed below.

1. Effect on Small SLHCs

a. Size standard for small SLHCs

The Small Business Administration (SBA) prescribes size standards for various economic activities and industries using the North American Industry Classification System (NAICS).[36] Under the SBA's standards, companies that are primarily engaged in holding securities of (or other equity interests in) depository institutions for the purpose of controlling those companies are addressed at NAICS Codes 551111 and 551112 (Office of Bank Holding Companies and Offices of Other Holding Companies). Companies within this group are considered to be small if they have annual receipts of $6 million or less. Companies that are primarily engaged in holding the securities of depository institutions and operating these entities are classified under NAICS Codes 522110–522190. Companies classified in this group are considered to be small if their total assets are less than 50 million. In this FRFA, OTS analyzes the impact of the final rule using both the $150 million asset size standard and the $6 million annual receipts standard.

b. Impact on small SLHCs.

The final rule replaces examination fees for SLHCs with semi-annual assessments on each responsible SLHC. OTS imposes a base assessment amount, and adds up to three components to this base amount. The three components are based on the risk or complexity of the SLHC's business, its organizational form, and its condition. No small SLHC is subject to the alternative assessment on conglomerate enterprises.

OTS calculates that there are 944 OTS-regulated SLHCs, including many intermediate holding companies within a single ownership structure. The final rule charges semi-annual assessments only on the responsible SLHC in each holding company structure. There are

[36] 13 CFR part 121.

508 responsible SLHCs. Of these 508 responsible SLHCs, 162 have total consolidated assets of less than $150 million and are considered to be small under the asset size standard. OTS estimates that 103 responsible SLHCs have annual receipts of $6 million or less and are small under the annual receipts standard.[37]

The final assessment rule affects all of these small SLHCs in varying degrees. The impact of the rule will be phased-in in three stages. OTS will assess 25 percent of the full assessment amount for the July 1, 2004 semi-annual assessment, 50 percent of the full assessment amount for the January 1, 2005 semi-annual assessment and the full assessment amount for the July 1, 2005 semi-annual assessment. The fully phased-in impact of the rule is set out below:

Base assessment charge. The base assessment charge affects all small SLHCs. Under the final rule, these small SLHCs will be assessed a charge of $3,000 for each semi-annual assessment (or $6,000 per year).

Risk/complexity component. OTS does not impose any additional charge on small Category I SLHCs under the recently published schedules for the risk/complexity component. Small Category II SLHCs, however, will be assessed an additional semi-annual charge of $1,000 to $3,000 (or $2,000 to $6,000 per year) under these schedules, depending on total consolidated assets.

There are 152 small Category I SLHCs and ten small Category II SLHCs under the asset size standard. OTS estimates that there are 96 small Category I SLHCs and seven small Category II SLHCs under the annual receipts standard.[38]

Organizational form component. The organizational form component applies only to section 10(l) SLHCs. For small section 10(l) holding companies that are Category I SLHCs, this component increases the semi-annual assessment by an additional 25 percent or $750 ($1,500 per year).[39] For small section 10(l) holding companies that are Category II SLHCs, this component also increases the semi-annual assessment by 25 percent. The increase to the semi-annual assessment for these SLHCs under this component will range from $1,000 to $1,500 ($2,000 to $3,000 per year).[40] The actual amount of the increase will depend upon total consolidated SLHC assets.

OTS regulates 45 section 10(l) SLHCs. Twelve of these section 10(l) SLHCs are small under the asset size standard. Of these 12 small section 10(l) SLHCs, 11 are Category I and one is Category II. OTS estimates that eight section 10(l) SLHCs are small under the annual receipts standard, and that seven of these small SLHCs are Category I and that one of these SLHCs is Category II.

Condition component. The final rule imposes an additional charge on SLHCs that are rated ''unsatisfactory.'' For these small SLHCs, the condition component increases the assessment by 100 percent. Applying the asset size standard, only six small SLHCs are rated unsatisfactory. Under the annual receipts standard, only four small SLHCs are rated unsatisfactory.[41]

The following chart summarizesthe impact of the final rule on the semi-annual assessment for small SLHCs:

	Number of small SLHCs	A	B	C	D
		Base assessment amount[42]	Risk/complexity component[43]	Organizational form component[44]	Total semi-annual assessment[45]
Small Category I SLHCs that are not section 10(1) SLHCs.	141 (asset size standard). 89 (receipts standard)	$3,000	$0	N/A	$3,000
Small Category II SLHCs that are not section 10(1) SLHCs.	9 (asset size standard) 6 (receipts standard)	3,000	3,000 (Maximum)	N/A	6,000 (Maximum)
Small Category I SLHCs that are section 10(1) SLHCs.	11 (asset size standard) 7 (receipts standard)	3,000	0	750	3,750
Small Category II SLHCs that are section 10(1) SLHCs.	1 (asset size standard) 1 (receipts standard)	3,000	3,000 (Maximum)	1,500 (Maximum)	7,500 (Maximum)

As noted above, for the SLHCs that are rated unsatisfactory, the amount of the semi-annual assessment is doubled. This will affect six SLHCs under the asset size standard and four SLHCs under the receipts standard.

The amounts charged under the new assessments rule for SLHCs will be offset by the elimination of the periodic SLHC examination fees. Although the amount of this offset will vary from SLHC-to-SLHC, OTS estimates that the average examination for a small SLHC is conducted every 18 months, and consumes approximately 39 examiner hours. At the current OTS billing rate of $145 per hour, OTS estimates that the average small SLHC will avoid on-site examination charges of $5,655 or an annualized charge of $3,770 per year.

[37] OTS has used December 2003 financial data for the purposes of this FRFA. OTS electronically collects information on total consolidated assets held by most SLHCs. However, it does not electronically collect annual receipts data. OTS has estimated the number of small SLHCs under the annual receipts standard by analyzing actual trailing 12-month revenues reported for 277 publicly traded SLHCs for the fiscal/calendar year ending December 31, 2003. Source: SNLDataSource. Using total revenue figures, OTS has concluded that approximately 20.2 percent of the 508 holding company structures are small under the annual receipts standard.

[38] OTS does not electronically collect annual receipts data for SLHCs. OTS has estimated the number of small Category I and II SLHCs, small section 10(l) SLHCs, and small unsatisfactorily rated SLHCs under the annual revenues standard by applying the proportion of small SLHCs in these categories under the asset size standard.

[39] The additional semi-annual organizational charge of $750 is 25 percent times the total of the base assessment component ($3,000) plus the risk/complexity component for Category I SLHCs ($0).

[40] This $1,000 to $1,500 range for the semi-annual organizational form component is 25 percent times the total of the base charge ($3,000) plus the risk/complexity component for a Category II SLHC. As noted above, the risk/complexity component for a Category II SLHC will range from $1,000 to 3,000.

[41] OTS cannot provide a more specific breakdown regarding the impact of the condition component on each of these small SLHCs because such information may result in the public disclosure of sensitive and privileged supervisory rating information for specific SLHCs. See 12 CFR 510.5.

[42] OTS has imposed a $3,000 base semi-annual assessment amount for all SLHCs.

[43] Amounts in Column B are from the published schedules for the risk/complexity component.

[44] Amounts in Column C are 25 percent of the total of Column A + Column B.

[45] Amounts in Column D equal Column A + Column B + Column C.

In any event, OTS has considered alternatives to the final assessment rule. OTS considered, for example, assessing all SLHCs the same base assessment amount; computing the semi-annual assessment amount for all SLHCs using the same asset-based assessment schedule; and continuing to assess only on-site examination and off-site examination related fees rather than semi-annual assessments.

OTS does not believe that the first two alternatives will further the goal of tailoring OTS charges more closely to the costs of supervising various types of SLHCs, and could result in some SLHCs subsidizing the increased costs of supervising others.[46] For the reasons set forth at Section III.B.2. of the preamble, OTS further believes that continuing to assess examination fees will not provide SLHCs with consistency and predictability of assessments to facilitate financial planning.

Although no commenter specifically addressed the IRFA, several commenters raised issues of concern to small SLHCs. Several argued that charges for all SLHCs, including small SLHCs, would increase substantially under the final rule. OTS acknowledges that the supervision charges for many SLHCs will rise under the final rule. This was an expected outcome because OTS was not fully recovering the entire costs of SLHC supervision. To mitigate the impact of these increases, however, OTS will phase in the assessment in three stages. See discussion at Section III.B.1.

Several commenters urged OTS to reduce assessments of shell SLHCs, which include many small SLHCs. For the reasons stated in Section III.C.1. of this preamble, OTS believes that the proposed assessment computation already included appropriate adjustments designed to address shell SLHCs. However, to mitigate the impact of the rule on top-tier family trusts, which include many small shell SLHCs, OTS has retained the ability to designate an intermediate tier SLHC in the holding company structure as the responsible SLHC under the rule. OTS will make this designation where there are multiple top-tier SLHCs in a holding company structure, the top-tier SLHCs are closely held family trusts, the trusts conduct no activities and essentially hold only passive investments, and the thrift assets are not consolidated onto the balance sheets of the trusts. As a result of these changes, such top-tier family trusts will not be subject to multiple assessments that would not reflect OTS examination, supervision or regulatory efforts. See discussion at Section III.D.1.

Finally, several commenters urged OTS to eliminate or reduce the organizational form component applicable to section 10(1) SLHCs, including small section 10(1) SLHCs. For the reasons discussed at Section III.D.5., OTS continues to believe that an organizational form component for section 10(1) SLHCs is appropriate. However, OTS has reduced the amount of the multiplier used under this component from 50 percent to 25 percent.

2. Effect on Small Savings Associations

This final rule affects small savings associations by eliminating the alternative calculation of the size component currently available to certain small savings associations. To be eligible for this calculation, a savings association must have been a savings association as of January 1, 1999, and its total assets must not exceed $100 million at the end of the current or any previous quarter.

Small savings associations are defined as institutions with assets under $150 million.[47] OTS estimates that approximately 281 small savings associations would have taken advantage of the alternative size calculation during the July 2004 semi-annual assessment.

Under the alternate calculation, the asset size component for a qualifying savings association is its assessment calculated under pre-1998 assessment schedules, rather than the current assessment schedules. Unlike the pre-1998 assessment schedules, the current assessment schedules use rates that have been adjusted for inflation and include a base charge for certain fixed costs that are the same or nearly the same for all institutions. Because the amount of the size component varies with the size of the institution, the impact of this change on small thrifts will vary. Using the most recent assessment table published in TB 48–20 for the January 2004 semi-annual assessment, the asset size component computed under the standard method and the alternative methods for institutions of various selected sizes is illustrated by the following chart:

IMPACT OF THE ALTERNATIVE SIZE COMPUTATION ON INSTITUTIONS OF SELECTED SIZES

Asset size	Asset size component computed under TB 48–20 schedules	Alternative asset size component computation	Net reduction of assessment
$0 Million	$2,042	$0	$2,042
$35 Million	7,898	6,046	1,852
$67 Million	13,252	11,575	1,677
$100 Million	16,935	15,993	942

Approximately 12 of the 281 small savings associations are currently rated ''3'' and are subject to an additional assessment under the condition component. This additional assessment is equal to 50 percent of the size component. For these 12 thrifts, the overall benefit of the alternative size calculation is 150 percent of the amount in the final column of the chart. Thus, the overall semi-annual benefit from the alternative size calculation for any individual 3-rated savings association would have ranged from $1,413 to $3,063, depending on the institution's asset size. Two small savings associations are rated ''4'' or ''5'' and are subject to an additional assessment under the condition component that is equal to 100 percent of the size component. For these two institutions, the overall benefit of the alternative size calculation is 200 percent of the figure in the final column of the chart. The overall semi-annual benefit from the alternative size calculation for any individual 4-or 5-rated savings

[46] Moreover, OTS believes that requiring unsatisfactory-rated SLHCs to pay for their extra supervisory costs will provide an added incentive for those SLHCs to promptly address the supervisory concerns that could adversely impact the depository subsidiary and to take other actions to improve their ratings.

[47] 13 CFR 121.201.

association will range from $1,884 to $4,084, depending on the institution's asset size.[48]

OTS considered various alternatives to the final rule. For example, it considered retaining the alternative asset size component for qualifying savings associations, prescribing a separate asset size schedule for smaller institutions with a lower base assessment rate or lower rates for smaller institutions, or phasing out the alternative schedule over time. Although no commenter specifically addressed the IRFA, several supported a gradual phase-out of the alternative schedule.

OTS's assessment regulation, to the maximum extent possible, attempts to tailor rates and charges to the agency's costs of supervising particular institutions. While it may have been appropriate to provide qualifying savings associations with an initial period to adjust to the assessment regulation originally adopted in 1998, it is not equitable to continue to require non-qualifying savings associations to carry the cost burdens for qualifying savings associations. Non-qualifying savings associations, which include many small savings associations,[49] have carried an extra burden for qualifying institutions for five years. This burden has not remained static, but rather has increased over the five-year period.[50] OTS believes that all institutions, even small institutions, should be able to plan for, adjust to, and carry the burden of inflation-related and cost changes reflected in OTS's assessments schedule. Accordingly, OTS does not believe that it is appropriate to compel other institutions to continue to carry an increased burden.

Some commenters urged OTS to retain the alternative size component for qualifying small trust-only institutions. For the reasons set forth in Section V., OTS does not agree that qualifying savings associations administering trust assets carry additional costs relative to their cost of supervision, and has not retained the alternative size component for these thrifts.

C. Other Matters

The final rule imposes no reporting, recordkeeping, or other compliance requirements. The current savings association assessment and the new SLHC assessment will be based on information contained in TFRs or in H–(b)11 Current/Annual Report, which savings associations and their SLHCs otherwise must file with OTS. While state-regulated depository institutions held by section 10(l) SLHCs do not file TFRs, they are still expected to submit holding company asset size information to OTS in the format of Schedule HC. OTS is working on a means to collect this information electronically from section 10(l) SLHCs.

OTS will continue to use its current collection procedures for savings associations and will use similar procedures for billing and collecting semi-annual assessments from SLHCs.

No federal rules duplicate, overlap, or conflict with this final rule.

VIII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

■ Accordingly, the Office of Thrift Supervision amends part 502, chapter V, title 12, Code of Federal Regulations as set forth below.

PART 502—ASSESSMENTS AND FEES

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

■ 2. In § 502.5, revise paragraphs (b) and (c) to read as follows:

§ 502.5 Who must pay assessments and fees?

(b) *Assessments.* If you are a savings association or a responsible savings and loan holding company, and OTS regulates you on the last day of January or on the last day of July of each year, you must pay a semi-annual assessment due on that day. Subpart A of this part describes OTS's assessment procedures and requirements.

(c) *Fees.* If you make a filing with OTS or use OTS services, the Director may require you to pay a fee to cover the costs of processing your submission or providing those services. The Director may charge a fee for any filing including notices, applications, and securities filings. The Director may charge a fee for any service including publications, seminars, certifications for official copies of agency documents, and records or services requested by other agencies. The Director also assesses fees for examining and investigating savings associations that administer trust assets of $1 billion or less, and savings association affiliates. If OTS incurs extraordinary expenses related to examination, investigation, regulation, or supervision of a savings association or its affiliate, the Director may charge the savings association or the affiliate a fee to fund those expenses. Subpart B of this part describes OTS's fee procedures and requirements.

■ 3. Revise part 502, subpart A to read as follows:

Subpart A—Assessments

Savings Associations—Calculation of Assessments

§ 502.10 How does OTS calculate the semi-annual assessment for savings associations?

(a) If you are a savings association, OTS determines your semi-annual assessment by totaling three components: your size, your condition, and the complexity of your business. OTS determines the amounts of each component under §§ 502.15 through 502.25 of this part.

(b) OTS uses the September 30 Thrift Financial Report to determine amounts due at the January 31 assessment; and the March 31 Thrift Financial Report to determine amounts due at the July 31 assessment. For purposes of §§ 502.10 through 502.25 of this part, total assets are your total assets as reported on Thrift Financial Reports filed with OTS.

§ 502.15 How does OTS determine my size component?

(a) *Chart.* If you are a savings association, OTS uses the following chart to calculate your size component:

[48] *See* 12 CFR 502.20. OTS cannot provide a more specific breakdown regarding the impact of the condition component on each of these small savings associations because such information may result in the public disclosure of sensitive and privileged supervisory rating information for specific institutions. *See* 12 CFR 510.5.

[49] OTS estimates that 194 of the 475 institutions with assets under $150 million are not qualifying savings associations.

[50] *See* discussion at 69 FR at 6207.

If your total assets are: . . .		Your size component is:		
Over— *	But not over—	This amount—Base assessment amount	Plus—Marginal rate	Of assets over—Class floor
Column A	Column B	Column C	Column D	Column E
0	$67 million	C1	D1	0.
$67 million	215 million	C2	D2	$67 million.
215 million	1 billion	C3	D3	215 million.
1 billion	6.03 billion	C4	D4	1 billion.
6.03 billion	18 billion	C5	D5	6.03 billion.
18 billion	35 billion	C6	D6	18 billion.
35 billion		C7	D7	35 billion.

(b) *Calculation.* To calculate your size component, find the row in Columns A and B that describes your total assets. Reading across in that same row, find your base assessment amount in Column C, your marginal rate in Column D, and your class floor in Column E. Calculate how much your total assets exceed your Column E class floor. Multiply this number by your Column D marginal rate. Add this number to your Column C base assessment amount. The total is your size component. OTS will establish the base assessment amounts and the marginal rates in columns C and D in a Thrift Bulletin.

§ 502.20 How does OTS determine my condition component?

(a) If you are a savings association, OTS uses the following chart to determine your condition component:

If your composite rating is:	Then your condition component is:
1 or 2	Zero.
3	50 percent of your size component.
4 or 5	100 percent of your size component.

(b) For the purposes of this section, OTS uses the most recent composite rating, as defined in 12 CFR part 516, of which you have been notified in writing before an assessment's due date.

§ 502.25 How does OTS determine my complexity component?

If you are a savings association and your portfolio exceeds any of the thresholds in paragraph (a) of this section, OTS will calculate your complexity component according to paragraph (c) of this section. If your portfolio does not exceed any of the thresholds in paragraph (a) of this section, your complexity component is zero.

(a) *Thresholds for complexity component.* OTS uses three separate thresholds in calculating your complexity component. You exceed a threshold if you have more than $1 billion in any of the following:

(1) Trust assets that you administer.

(2) The outstanding principal balances of assets that are covered, fully or partially, by your recourse obligations or direct credit substitutes.

(3) The principal amount of loans that you service for others.

(b) *Assessment rates.* OTS will establish one or more assessment rates for each of the types of activities listed in paragraph (a) of this section. OTS will publish those assessment rates in a Thrift Bulletin.

(c) *Calculation of complexity component.* OTS separately considers each of the thresholds in paragraph (a) of this section in calculating your complexity component. OTS first calculates the amount by which you exceed any of those thresholds. OTS multiplies the amount by which you exceed any thresholds in paragraph (a) of this section by the applicable assessment rate(s) under paragraph (b) of this section. OTS then totals the results. This total is your complexity component.

Savings and Loan Holding Companies—Calculation of Assessments

§ 502.26 How does OTS calculate the semi-annual assessment for savings and loan holding companies?

(a) OTS calculates the semi-annual assessment savings and loan holding companies as follows:

(1) OTS will assess a base assessment amount of $3,000 on responsible savings and loan holding companies. The base assessment amount reflects OTS's estimate of the base costs of conducting on- and off-site supervision of a noncomplex, low risk savings and loan holding company structure. OTS will periodically revise this amount to reflect changes in inflation based on a readily available index. OTS will establish the revised amount of the base assessment in a Thrift Bulletin.

(2) OTS will add three components to the base assessment amount to compute the amount of the semi-annual assessment for responsible savings and loan holding companies: a component based on the risk or complexity of the savings and loan holding company's business, a component based on its organizational form, and a component based on its condition. OTS determines the amount of each component under §§ 502.27 through 502.29 of this part.

(b) For purposes of the semi-annual assessment of savings and loan holding companies:

(1) The *responsible holding company* is the registered holding company at the highest level of ownership in a holding company structure, unless OTS designates another savings and loan holding company in the holding company structure. OTS may designate an intermediate-tier holding company if the assessment of this entity would more accurately reflect OTS costs of supervising the holding company structure and:

(i) There are multiple top-tier holding companies in the holding company structure;

(ii) The top-tier holding company is organized outside of the United States, and is subject to the consolidated review of a foreign regulator; or

(iii) Other circumstances indicate that the assessment of the top-tier holding company is inappropriate.

(2) *Total consolidated holding company assets* are the total assets as reported on the Thrift Financial Report, Schedule HC. If Schedule HC is unavailable, OTS will use total assets reported on report H–(b)11. OTS uses information contained in the September 30 Schedule HC or report H–(b)11 to determine amounts due at the January 31 assessment; and the March 31 Schedule HC or report H–(b)11 to determine amounts due at the July 31 assessment.

§ 502.27 How does OTS determine the risk/complexity component for a savings and loan holding company?

(a) OTS computes the risk/complexity component for responsible savings and loan holding companies using schedules that set out charges based on OTS holding company risk/complexity classifications and total consolidated holding company assets. OTS will establish these schedules in a Thrift Bulletin.

(b) For the purposes of this section, the holding company risk/complexity classification is the most recent risk/complexity classification of which OTS notified the savings and loan holding company in writing before an assessment's due date.

(1) OTS classifies holding companies as Category I (low risk, noncomplex holding company); Category II (complex or high risk holding company); or Category III (conglomerate).

(2) The OTS holding company risk/complexity classifications reflect OTS's assessment of a holding company's financial condition, financial independence of the savings association and other affiliates that are regulated financial entities, operational independence of the savings association and other affiliates that are regulated financial entities, reputational risks raised by affiliation with the holding company, and management experience of the holding company, savings association, and affiliates. The OTS holding company risk/complexity classification system is more fully described in the OTS Holding Company Handbook.

(3) A conglomerate is a holding company that: (i) is one of the most complex or highest risk holding companies under the holding company risk/complexity classification system; (ii) is made up of a number of different companies or legal enterprises that offer products from more than one financial sector (*e.g.*, insurance, securities, and banking) or operate in diversified fields; and (iii) generally manages these companies and enterprises along functional lines, rather than as separate legal entities.

(c) OTS uses the following chart to compute the risk/complexity component under this section. OTS will establish the amounts in column C and D in the Thrift Bulletin for each holding company risk/complexity classification. The amounts established for column C and D that are applicable to conglomerates will be three times the amounts established for column C and D for complex or higher risk holding company enterprises of the same asset size.

If your total consolidated assets are . . .		Your risk/complexity component is . . .		
Over . . .	But not over . . .	This amount . . .	Plus—this marginal rate . . .	Of assets over . . .
Column A	Column B	Column C	Column D	Column E
$0	$150 Million	C1	D1	$0
150 Million	250 Million	C2	D2	150 Million
250 Million	500 Million	C3	D3	250 Million
500 Million	1 Billion	C4	D4	500 Million
1 Billion	5 Billion	C5	D5	1 Billion
5 Billion	50 Billion	C6	D6	5 Billion
50 Billion	100 Billion	C7	D7	50 Billion
100 Billion	300 Billion	C8	D8	100 Billion
Over 300 Billion		C9	D9	300 Billion

(d) To compute your risk/complexity component, find the row in the appropriate schedule that describes your total consolidated assets by referring to the amounts in Columns A and B. In that row, calculate how much your total consolidated assets exceed the class floor (Column E); multiply this number by your marginal rate (Column D); and add the product to the amount in Column C. The total is your risk/complexity component.

§ 502.28 How does OTS determine the organizational form component for a savings and loan holding company?

OTS will include an organizational form component if you are a responsible savings and loan holding company that OTS regulates under section 10(l) of the HOLA. OTS will compute your organizational form component by adding the base assessment to your risk/complexity component, and multiplying this amount by 25 percent.

§ 502.29 How does OTS determine the condition component for a savings and loan holding company?

(a) If the most recent examination rating assigned to the responsible savings and loan holding company (or the most recent examination rating assigned to any savings and loan holding company in the holding company structure) is ''unsatisfactory,'' OTS will assess a charge under the condition component. The amount of the condition component is equal to 100 percent of the sum of the base assessment amount, the risk/complexity component, and any organizational form component.

(b) For the purposes of this section, examination ratings are the ratings that OTS assigns under the OTS holding company rating system. OTS uses the most recent rating of which the savings and loan holding company has been notified in writing before an assessment's due date.

Payment of Assessments

§ 502.30 When must I pay my assessment?

OTS will bill you semi-annually for your assessments. Assessments are due January 31 and July 31 of each year, unless that date is a Saturday, Sunday, or Federal holiday. If the due date is a Saturday, Sunday or Federal holiday, your assessment is due on the first day preceding the due date that is not a Saturday, Sunday or Federal holiday. At least seven days before your assessment is due, the Director will mail you a notice that indicates the amount of your assessment, explains how OTS calculated the amount, and specifies when payment is due.

§ 502.35 How do I pay my assessment?

(a) *Savings associations.* (1) If you are a member of a Federal Home Loan Bank that offers demand deposit accounts which permit direct debits, you must maintain a demand deposit account at your Federal Home Loan Bank with

sufficient funds to pay your assessment when due. OTS will notify your Federal Home Loan Bank of the amount of your assessment. OTS will debit your account for your assessments.

(2) If paragraph (a)(1) of this section does not apply to you, OTS will directly debit an account you must maintain at your association.

(b) *Savings and loan holding companies.* You may establish an account at an insured depository institution and authorize OTS to debit the account for your semi-annual assessment. If you do not establish an account and maintain funds in the account sufficient to pay the semi-annual assessment when due, OTS may charge you a fee to cover its administrative costs of collecting and billing your assessment. This fee is in addition to interest on delinquent assessments charged under § 502.45 of this part. OTS will establish the amount of the administrative fee and publish the amount of the fee in a Thrift Bulletin.

§ 502.40 Will OTS refund or prorate my assessment?

(a) OTS will not refund or prorate your assessment, even if you cease to be a savings association or a savings and loan holding company.

(b) If a conservator or receiver has been appointed, you must continue to pay assessments in accordance with this part. OTS will not increase or decrease your assessment based on events that occur after the date of the Thrift Financial Report or H–(b)11 Annual/ Current Report upon which your assessment is based.

§ 502.45 What will happen if I do not pay my assessment on time.

(a) Your assessment is delinquent if you do not pay it on the date it is due under § 502.30 of this part. The Director will charge interest on delinquent assessments. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the calendar quarter preceding the assessment.

(b) If a savings and loan holding company fails to pay an assessment within 60 days of the date it is due under § 502.30 of this part, the Director may assess and collect the assessment with interest from a subsidiary savings association. If a savings and loan holding company controls more than one savings association, the Director may assess and collect the assessment from each savings association as the Director may prescribe.

■ 4. Revise § 502.50 to read as follows:

§ 502.50 What fees does OTS charge?

(a) The Director assesses fees for examining or investigating savings associations that administer trust assets of $1 billion or less, and saving association affiliates. Because OTS recovers the ordinary costs of examining and investigating savings and loan holding companies through the semi-annual assessment under §§ 502.25 through 502.29 of this part, the Director will not generally charge an examination fee to a savings and loan holding company. ''Affiliate'' has the meaning in 12 U.S.C. 1462(9), except that, for this part only, ''affiliate'' does not include any entity that is consolidated with a savings association on the Consolidated Statement of Condition of the Thrift Financial Report.

(b) The Director assesses fees for processing notices, applications, securities filings, and requests, and for providing other services.

■ 5. Revise § 502.75(b) to read as follows

§ 502.75 What will happen if I do not pay my fees on time?

* * * * *

(b) *Failure to pay.* If you are a savings association and your holding company, affiliate, or subsidiary fails to pay any fee within 60 days of the date specified in a bill, the Director may assess and collect that fee, with interest, from you. If the holding company, affiliate, or subsidiary is related to more than one savings association, the Director may assess the fee against and collect it from each savings association as the Director may prescribe.

Dated: May 28, 2004.

By the Office of Thrift Supervision.

James Gilleran,

Director.

[FR Doc. 04–12128 Filed 5–27–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17725; Airspace Docket No. 04–ACE–37]

Modification of Class E Airspace; Wahoo, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

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

DATES This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules Docket must be received on or before July 28, 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–2004–17725/ Airspace Docket No. 04–ACE–37, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Wahoo, NE. An examination of controlled airspace for Wahoo, NE revealed that the Wahoo Municipal Airport ARP used in the legal descriptions for this Class E airspace area is incorrect and that the airspace area does not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also identified a discrepancy in the bearing from the Wahoo nondirectional radio beacon (NDB) used in the Class E airspace legal description. The legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The limit of the Class E airspace area extension should be defined as a distance from the Wahoo NDB and the bearing corrected.

This action expands the Wahoo, NE Class E airspace area extending upward from 700 feet above the surface from a 6.4-mile radius to a 7.4–mile radius of Wahoo Municipal Airport in order to comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. It defines the airspace extension in relation to the Wahoo NDB, corrects the NDB bearing from 032° to 031° and brings the legal description of the Wahoo, NE Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17725/Airspace Docket No. 04–ACE–37'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

ACE NE E5 Wahoo, NE

Wahoo Municipal Airport, NE
(Lat. 41° 14′29″ N., long 96° 35′39″ W.)
Wahoo NDB
(Lat. 41° 14′21″ N., long. 96° 35′54″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Wahoo Municipal Airport and within 2.6 miles each side of the 031° bearing from the Wahoo NDB extending from the 7.4-mile radius of the airport to 7 miles northeast of the NDB.

* * * * *

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

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–12176 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17724; Airspace Docket No. 04–ACE–36]

Modification of Class E Airspace; Ogallala, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising the Class E airspace area at Ogallala, NE. A review of the Class E airspace area extending upward from 700 feet above the surface at Ogallala, NE reveals it does not reflect the current Searle Field airport reference point (ARP) nor does it comply with criteria for diverse departures. This airspace area is enlarged and modified to conform to FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules Docket must be received on or before July 27, 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–2004–17724/ Airspace Docket No. 04–ACE–36, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Ogallala, NE. An examination of controlled airspace for Ogallala, NE revealed that the Searle Field ARP used in the legal descriptions for this Class E airspace area is incorrect. Also, the airspace area does not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The Ogallala, NE Class E airspace area extending upward from 700 feet above the surface is increased from a 6.7-mile radius to an 8.6-mile radius of Searle Field in order to comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. These modifications bring the legal description of the Ogallala, NE Class E airspace area into compliance with FAA Order 7400.2E. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17724/Airspace Docket No. 04–ACE–36.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

ACE NE E5 Ogallala, NE

Ogallala, Searle Field, NE
(Lat. 41°07' 10'' N., long. 101°46'11'' W.)

That airspace extending upward from 700 feet above the surface within an 8.6–mile radius of Searle Field.

* * * * *

Issued In Kansas City, MO, on May 18, 2004.

Paul J. Sheridan

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–12175 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17723; Airspace Docket No. 04–ACE–35]

Modification of Class E Airspace; North Platte, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at North Platte, NE. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above the surface at North Platte, NE reveals neither reflects the current North Platte Regional Airport Lee Bird Field airport reference point (ARP) and neither complies with criteria for diverse departures. These airspace areas are enlarged and modified to conform to FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules Docket must be received on or before July 27, 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–2004–17723/ Airspace Docket No. 04–ACE–35, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet above the surface at North Platte, NE. An examination of controlled airspace for North Platte, NE revealed that the North Platte Regional Airport Lee Bird Field ARP used in the legal descriptions for both Class E airspace areas is incorrect. Also, neither airspace area complies with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The North Platte, NE Class E surface area is increased from a 4.6-mile radius to a 5.4-mile radius of North Platte Regional Airport Lee Bird Field, thereby eliminating the need for an extension to the Class E surface area. The Class E airspace area extending upward from 700 feet above the surface is increased from a 7.1-mile radius to an 8.4-mile radius of North Platte Regional Airport Lee Bird Field in order to comply with the criteria for 700 feet AGL airspace required for diverse departures. These modifications bring the legal descriptions of the North Platte, NE Class E airspace areas into compliance with FAA Order 7400.2E. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17723/Airspace Docket No. 04–ACE–35.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated

September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 North Platte, NE

North Platte Regional Airport Lee Bird Field, NE
(Lat. 41°07′34″ N., long. 100°41′01″ W.)
Within a 5.4-mile radius of North Platte Regional Airport Lee Bird Field.

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

* * * * *

ACE NE E5 North Platte, NE

North Platte Regional Airport Lee Bird Field, NE
(Lat. 41°07′34″ N., long. 100°41′01″ W.)
That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of North Platte Regional Airport Lee Bird Field.

* * * * *

Issued in Kansas City, MO, on May 18, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–12174 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17612; Airspace Docket No. 04–ASW–03]

RIN 2120–AA66

Modification of Restricted Area 5115, NM; and Restricted Areas 6316, 6317, and 6318, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description for Restricted Area 5115 (R–5115), Deming, NM; R–6316, Eagle Pass, TX; R–6317, El Sauz; and R–6318, Marfa, TX to reflect a change in the using agency. Specifically, this action changes the using agency from the ''United States Custom Service'' to the ''Western Air Defense Sector'' in response to a request from the United States Air Force (USAF). This action makes no other changes to R–5515, R–6316, R–6317, or R–6318.

EFFECTIVE DATE: 0901 UTC, August 5, 2004.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations and Safety, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On February 20, 2004, the USAF requested that the FAA take action to change the using agency of R–5515, R–6316, R–6317, and R–6318 from the ''United States Custom Service'' to the ''Western Air Defense Sector.'' The FAA is taking this action in response to that request. Since this action only changes the using agency for the restricted area and does not change the dimensions or operational requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This action amends title 14 Code of Federal Regulations (14 CFR) part 73 by changing the using agency of R–5515, R–6316, R–6317, and R–6318 from the ''United States Custom Service'' to the ''Western Air Defense Sector.'' This action makes no other changes to R–5515, R–6316, R–6317, or R–6318.

Section 73.51 and 73.63 of part 73 of the Federal Aviation Regulations were republished in FAA Order 7400.8L dated October 7, 2003.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that 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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

■ 2. § 73.51 and 73.63 are amended as follows:

§ 73.51 and 73.63 [Amended]

* * * * *

R–5115 Deming, NM [Amended]

■ By removing the words ''Using Agency. United States Customs Service'' and inserting the words ''Using Agency. Western Air Defense Sector.''

* * * * *

R–6316 Eagle Pass, TX [Amended]

■ By removing the words ''Using Agency. United States Customs Service'' and inserting the words ''Using Agency. Western Air Defense Sector.''

* * * * *

R–6317 El Sauz, TX [Amended]

■ By removing the words ''Using Agency. United States Customs Service'' and inserting the words ''Using Agency. Western Air Defense Sector.''

* * * * *

R–6318 Marfa, TX [Amended]

■ By removing the words ''Using Agency. United States Customs Service'' and inserting the words ''Using Agency. Western Air Defense Sector.''

* * * * *

Issued in Washington, DC, on May 21, 2004.

Paul Gallant,

Acting Manager, Airspace and Rules, ATO–R.

[FR Doc. 04–12065 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15410; Airspace Docket No. 03–AAL–1]

RIN 2120–AA66

Establishment of Restricted Area 2204, Oliktok Point; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a restricted area 2204 (R–2204) in the vicinity of Oliktok Point, AK. The Department of Energy (DOE) requested the establishment of this airspace to support its Mixed-Phased Arctic Clouds experiment. The experiment utilizes a moored balloon which will fly up to 7,000 feet mean sea level (MSL). The FAA is taking this action in response to the DOE's request.

EFFECTIVE DATE: 0901 UTC, August 5, 2004.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On October 8, 2003, the FAA published in the **Federal Register** a notice proposing the establishment of R–2204, Oliktok, AK (68 FR 58052). This proposed area would be set aside for DOE to collect air samples from a moored balloon below 7000 feet MSL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. The FAA received five comments pertaining to the proposal. All comments were fully considered before proceeding with this rule. The FAA believes that the final rule best meets air traffic control and user requirements, while promoting the safe and efficient use of airspace.

The Aircraft Owners and Pilots Association (AOPA) opposed the establishment of a restricted area and recommended an alert area as a more suitable option, stating that an ''alert area provides an appropriate level of safety for general aviation aircraft.''

The FAA does not agree with the AOPA on this matter. Only those activities that do not pose a hazard to other aircraft may be conducted in an alert area, and the activities shall be conducted in accordance with visual flight rules. Since the balloon is unable to lift both the necessary scientific instrument packages, and the cabling and lights for marking, the FAA has determined that an unlighted, moored balloon at an altitude of 6,700 feet MSL in minimal VFR conditions is a hazardous operation.

Another comment opposing the restricted area recommended marking aeronautical navigation charts with a symbol similar to tall antenna tower or a transverse cable. In addition to the symbol, it was also recommended that a NOTAM be issued ten days in advance to advise airmen of hazardous operations at Oliktok.

The NOTAM system will be used to provide details whenever the balloon is to be airborne. The Restricted Area designation is needed to segregate IFR aircraft from hazardous activity (unlit balloon) and provide a means for charting for VFR general aviation pilots.

A comment suggested as an alternative to designate an appropriate symbol and warning similar to a tall tower; mark and light balloon IAW 14 CFR 101; and use NOTAM system to announce balloon usage.

Title 14 Code of Federal Regulations (14 CFR) part 101, Moored Balloons, Kites, Unmanned Rockets, and Unmanned Free Balloons, is intended to provide the procedures and conditions necessary for the safe operation of balloons, kites, and rockets in the national airspace system. Where a proponent cannot meet these procedures and conditions, the FAA is charged to provide the necessary level of safety. In this case, a restricted area is the appropriate means to segregate IFR and VFR aircraft from hazardous activity. Chart symbols and warnings are standardized. We are planning to include an additional ''information box'' on the chart by the area to provide additional data to pilots.

This commentor also stated that the proposed Restricted Area will eliminate Oliktok Point as a precautionary landing field.

In case of an airborne emergency the proponent can quickly lower the balloon once notified by Anchorage ARTCC or Deadhorse FSS. Additionally, the hours of balloon operation will be after local aviation assets have landed and at night, during times of minimal VFR and IFR traffic.

The Alaska Supplement lists Oliktok LRRS airport as owned by the United States Air Force and is closed to the public. The runway condition is unmonitored and a visual inspection of the runway is recommended before landing. There are 48 foot power lines 2,361 feet east of the runway and there are no snow removal operations during the winter months. Alaska Airlines commented that they did not anticipate any operational impact to its normal operations.

With the exception of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

In response to the DOE's request, the FAA is amending to 14 CFR part 73 to establish R–2204 at Oliktok Point, AK, as part of the DOE Mixed-Phased Arctic Clouds experiment. R–2204 will be established northeast of Oliktok Point, AK, and will consist of a two nautical mile (nm) area radius from the surface up to, but not including, 7,000 feet MSL. The area will contain an instrumented, moored balloon on a two-kilometer, unlighted cable for the purpose of collecting air samples during instrument flight conditions. The area will be activated starting October 2004 for approximately 30 days a year, and be effective through the year 2009. The area will be activated by NOTAM 24 hours in advance. The objective of the research is to better understand the processes and uncertainties related to global climate change.

This action amends 14 CFR 73.22 of part 73 of the Federal Aviation Regulations that were republished in FAA Order 7400.8L dated October 7, 2003.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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 proposed 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.

Environmental Impact

Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500–1508), and other

applicable law, the FAA prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) dated February 3, 2004. The EA/FONSI analyzed the establishment of the restricted area to support the deployment of a moored weather research balloon as one of the actions included in the DOE EA for the research program dated February 1997. This final rule will not result in significant environmental impacts.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.22 [Amended]

■ 2. § 73.22 is amended as follows:

* * * * *

R–2204 Oliktok Point, AK (New)

Boundaries. Within a 2 nautical mile radius centered at (lat. 70°30′5″ N., long. 149°51′33″ W.).

Designated altitudes. Surface to, but not including, 7,000 feet MSL.

Time of designation. By NOTAM, 24 hours in advance, not to exceed 30 days annually.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. Department of Energy, Sandia National Labs/National Nuclear Security Administration, Albuquerque, NM.

* * * * *

Issued in Washington, DC, on May 21, 2004.

Paul Gallant,

Acting Manager, Airspace and Rules, ATO–R.

[FR Doc. 04–12063 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–036]

Drawbridge Operation Regulations: Cheesequake Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the New Jersey Transit Rail Operations railroad bridge, at mile 0.2, across Cheesequake Creek, New Jersey. Under this temporary deviation the bridge may remain closed for two weekends May 14 & 15, 2004, and May 21 & 22, 2004, from 11 p.m. on Friday through 8 a.m. on Saturday to facilitate scheduled bridge maintenance. One alternate weekend date of June 4 & 5, 2004, was also requested in case of inclement weather.

DATES: This deviation is effective from May 14, 2004 through June 5, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

SUPPLEMENTARY INFORMATION: The New Jersey Transit Rail Operations railroad bridge has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.709(b).

New Jersey Transit Rail Operations requested a temporary deviation from the drawbridge operation regulations to facilitate repairs to the miter rails at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the New Jersey Transit Rail Operations railroad bridge may remain in the closed position on two weekends May 14 & 15, 2004, and May 21 & 22, 2004, from 11 p.m. on Friday through 8 a.m. on Saturday. One alternate weekend date of June 4 & 5, 2004, was also requested as alternate dates in case inclement weather results in cancellation of the scheduled bridge maintenance.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: May 14 2004.

Vivien S. Crea,

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

[FR Doc. 04–12131 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 252 and 257

[Docket No. 2004–3 CARP]

Filing of Claims for Cable and Satellite Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to continuing delays in the receipt of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the cable and satellite royalty funds for the year 2003. In order to ensure that claims are received timely, claimants are encouraged to file their cable and satellite claims online, utilizing the special procedures described in this document.

EFFECTIVE DATE: May 28, 2004.

ADDRESSES: Online submissions should be made to the following: for cable claims *http://www.copyright.gov/carp/cable/claims.html*; for satellite claims *http://www.copyright.gov/carp/satellite/claims.html*. See **SUPPLEMENTARY INFORMATION** for information about online electronic filing through the Copyright Office website. If hand delivered by a private party, an original and two copies of each claim should be brought to: Room LM–401 of the James Madison Memorial Building and addressed as follows: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000 between 8:30 am and 5 pm. If delivered by a commercial courier, an original and two copies of each claim must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, NE., between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel/CARP, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO

Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Senior Attorney, or Gina Giuffreda, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Copyright Act, 17 U.S.C., places a statutory obligation on cable systems who retransmit over-the-air broadcast signals to submit royalty fees to the Copyright Office for such retransmissions. Distribution of the royalty fees is made to copyright owners whose works were embodied in those retransmissions made by cable systems. 17 U.S.C. 111(d)(3). In order to claim eligibility for a distribution of cable royalty fees, a claimant must submit to the Copyright Office a claim during the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 111(d)(4)(A). The regulations governing the content and submission of cable claims are found at 37 CFR part 252.

Likewise, copyright owners whose works were embodied in over-the-air television broadcast signals retransmitted by satellite carriers may seek a distribution of the satellite royalty fees collected by the Copyright Office. 17 U.S.C. 119. Eligibility for satellite royalty fees is predicated upon the submission of a claim in the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 119(b)(4)(A). The regulations governing the content and submission of satellite claims are found at 37 CFR part 257.

As a general rule, a cable or satellite claim is considered timely filed with the Copyright Office if it is hand delivered to the correct office within the Copyright Office during the month of July, or if it is mailed to the correct address and it bears a July U.S. Postal Service postmark. *See* 37 CFR 252.4 (cable); 37 CFR 257.4 (satellite). However, because July 31 falls on a Saturday this year, the deadline is Monday, August 2.[1] The regulations do not provide for the filing of cable and satellite claims by alternative methods such as electronic submission.

Unfortunately, the Office has experienced disruptions of postal service since October 17, 2001. *See* 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). While mail delivery to the Office has resumed, the Office continues to experience delays in receipt of its mail, due in part to the diversion of mail to an off-site location for screening. Consequently, during the past two years, the Office has offered and recommended alternative methods for the filing of cable and satellite claims to the 2001 and 2002 royalty funds. *See* 67 FR 21176 (April 30, 2002) and 68 FR 32381 (May 30, 2003). Because mail will continue to be diverted to an off-site location for screening, the Office anticipates issuing by the end of 2004 new regulations providing for a permanent system of electronic filing of claims. However, since such regulations are not in place at this time, the Office is offering and recommending the same alternative filing methods this year for claims to the 2003 royalty funds.

Moreover, claimants are strongly advised to send their claims early in the month of July. Persons submitting claims at the end of the month risk missing the deadline for submission of claims. Online forms are available and may be submitted via the Office's Web site. Note, however, that the alternative methods set forth in this Notice apply only to the filing of cable and satellite claims for the 2003 royalties which are due on or before August 2, 2004, and in no way apply to other filings with the Office. Please note that as a result of July 31 falling on a Saturday this year, cable and satellite claims are due on Monday, August 2, 2004, in accordance with 37 CFR 252.4(b) and 257.4(b).

Claimants are further advised that this Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR parts 252 (cable) and 257 (satellite).

Acceptable Methods of Filing Cable and Satellite Claims for the Year 2003

Claims to the 2003 cable and satellite royalty funds may be submitted as follows:

a. Online Submission

In order to best ensure the timely receipt by the Copyright Office of cable and satellite claims, the Office strongly encourages claimants to file their claims online by or before 11:59 p.m. on August 2, 2004, via the Copyright Office Web site. The Office has devised online electronic forms for filing both single and joint cable and satellite claims. Claimants will be able to access and complete the forms via the Copyright Office Web site and may submit the forms electronically as provided in the instructions accompanying the forms. Cable forms will be posted on the Office Web site at ''*http://www.copyright.gov/carp/cable/claims.html*''. Satellite forms will be posted at ''*http://www.copyright.gov/carp/satellite/claims.html*''. Claimants filing a joint claim may list each of their joint claimants directly on the Office's online joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document (''PDF'') format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or (in the case of text-only files) in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the names and addresses of the joint claimants. *See* 37 CFR 252.3(b)(1) and 257.3(b)(1).

The cable and satellite forms will be available for use from July 1, 2004, through August 2, 2004. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted online using forms or formats other than those specified in this Notice WILL NOT BE ACCEPTED by the Office. Claims filed online must be received by the Office no later than 11:59 p.m. E.D.T. on August 2, 2004. Specifically, the completed electronic forms must be received by the Office's server by that time. Any claim received after that time will be considered as untimely filed. Claimants who file electronically will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address claimants are advised to print a copy of the confirmation report and retain it as proof of a timely filing. Because of the possibility, however remote, that the Office's online filing system might be inaccessible the evening of August 2 for reasons beyond the Office's control, claimants submitting their claims online are strongly encouraged to submit their claim no later than July 31, 2004.

When filing claims online, all provisions set forth in 37 CFR parts 252 and 257 apply except §§ 252.3(b)(5) and 257.3(b)(5), which require the original

[1] In any year in which July 31 falls on Saturday, Sunday, a holiday or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August or claims that are properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed. 37 CFR 252.4(b), 257.4(b).

signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures. However, the Office anticipates issuing regulations providing for a permanent system of electronic filing of claims by the end of 2004.

b. Hand Delivery by Private Party

The Office encourages claimants who do not file their claims electronically to deliver their claims personally by 5 p.m. E.D.T. on any business day, during the month of July 2004 and no later than August 2, 2004. Claimants are reminded that on February 4, 2004, the Office adopted a new policy for the hand delivery of documents to the Office of the Copyright Office General Counsel. 69 FR 5371 (February 4, 2004). Therefore, claimants personally delivering their claims should deliver their claims to the Copyright Office's Public Information Office located at LM–401 of the James Madison Memorial Building. To ensure that the claims are directed to the Office of the General Counsel, an original and two copies of each claim should be placed in an envelope addressed in the following manner: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, LM–401, First and Independence Avenue, SE., Washington, DC 20559–6000. The Public Information Office is open Monday–Friday, 8:30 a.m. to 5 p.m., except Federal holidays.

If a claimant does not address the envelope in accordance with the instructions herein and the envelope is misdirected and consequently does not reach the Public Information Office by 5 p.m. on Monday, August 2, 2004, such claims will be considered as untimely filed and will be rejected. Claimants should also note that the Public Information Office closes promptly at 5 p.m. The Copyright Office will not accept any claim that a claimant attempts to deliver after the Public Information Office has closed.

In addition, claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR parts 252 and 257.

c. Hand Delivery by Commercial Courier

Since December 29, 2003, the Library of Congress has not accepted in-person, on-site deliveries from non-governmental, commercial couriers or messengers. *See* 68 FR 70039 (December 16, 2003). Instead, such couriers must deliver materials for staff at the Library, including cable and satellite claims, directly to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE. The CCAS will accept items from couriers with proper identification, *e.g.,* a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m. The envelope containing an original and two copies of each claim should be addressed as follows: Office of the General Counsel/CARP, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. The date of receipt as documented by CCAS will be considered the date of receipt by the Copyright Office for purposes of timely filing. Any claim received by CCAS which does not have a date stamp of August 2, 2004, or earlier, will be considered untimely for this filing period and will be rejected by the Copyright Office.

Claimants delivering their claims by commercial courier should note that they must follow all provisions set forth in 37 CFR parts 252 and 257.

d. By Mail

Sections 252.4(a)(2) and 257.4(a)(2) direct claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to secure the only acceptable proof of a timely filing by mail, should the claim reach the Office after August 2, 2004. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the month of July, or by August 2, 2004, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date. 37 CFR 252.4(e) and 257.4(e). Claims received after July 31, or the first business day in August when appropriate, with only a business meter mark will be rejected as untimely unless the claimant is able to produce the certified mail receipt. *See Universal Studios LLLP* v. *Peters,* 308 F.Supp.2d 2004 (D.D.C. 2004); *Metro-Goldwyn-Mayer Studios, Inc.* v. *Peters,* No. 03–1079, 2004 U.S. Dist. LEXIS 5399 (D.D.C. Mar. 24, 2004).

As noted above, disruption of the mail service and delivery of incoming mail to an off-site screening center have reduced the timeliness of receipt of mail by the Copyright Office. Such delays may hamper the Office's ability to compile a claimant list and may affect the Office's ability to make partial distributions of cable and satellite funds not in controversy. Consequently, the Office suggests that claimants use the mail (and preferably certified mail, return receipt requested) only if none of the other methods outlined above are feasible.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 252 for cable claims and part 257 for satellite claims.

Faxes Not Accepted

Although the Copyright Office accepted the submission of 2003 Digital Audio Recording Technology (''DART'') claims via facsimile transmission, the Office has determined that, due to the high volume of cable and satellite claims received by the Office relative to DART claims, it is administratively too burdensome to permit the faxing of cable and satellite claims. Consequently, any cable or satellite claims received by the Copyright Office via facsimile transmission WILL NOT BE ACCEPTED.

Waiver of Regulation

The regulations governing the filing of cable and satellite claims require ''the original signature of the claimant or of a duly authorized representative of the claimant.'' § 252.3(b) (cable); § 257.3(b) (satellite). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2003 cable and satellite royalty funds. The Office is not waiving the statutory deadline for filing either cable or satellite claims, a deadline the Office has no power to waive. *See, United States* v. *Locke,* 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by August 2, 2004.

Waiver of an agency's rules is ''appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.'' *Northeast Cellular Telephone Company* v. *FCC,* 897 F.2d 1164, 1166 (DC Cir. 1990); *see also, Wait Radio* v. *FCC,* 418 F.2d 1153 (DC Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, due to the continued problems with the delivery of the mail and the transition to an electronic filing system, the Office believes that under these special circumstances the public interest will best be served by waiving, for this filing period, the requirement that cable and satellite claims bear the original signature of the claimant or of a duly

authorized representative of the claimant when, and only when, such claim is filed electronically.

Dated: May 24, 2004.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04–12142 Filed 5–27–04; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 440

[CMS–2132–F]

RIN 0938–AM26

Medicaid Program; Provider Qualifications for Audiologists

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will revise the requirements for audiologists furnishing services under the Medicaid program. As a result, the requirements will create consistency with the Medicare program's definition of a qualified audiologist by recognizing State licensure in determining provider qualifications. These revised standards will expand State flexibility in choosing qualified audiologists.

DATES: *Effective Date:*

These regulations are effective on June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Clarkson, (410) 786–5918.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicaid Requirements

Medicaid is the Federally assisted State program authorized under title XIX of the Social Security Act (the Act) that provides funding for medical care provided to certain needy aged, blind, and disabled persons, families with dependent children, and low-income pregnant women and children. Each State determines the scope of its program, within limitations and guidelines established by the law and implementing regulations at 42 CFR chapter IV, subchapter C. Each State submits a State plan that, when approved by us, provides the basis for granting Federal funds to cover part of the expenditures incurred by the State for medical assistance and the administration of the program.

Section 1902(a) of the Act specifies the eligibility requirements that individuals must meet in order to receive Medicaid. Other sections of the Act describe the eligibility groups in detail and specify limitations on what may be paid for as ''medical assistance.'' Under section 1905(a) of the Act, States must provide certain basic services. Section 1905(a) of the Act also identifies categories of services States may provide as medical assistance.

Audiology Services

Under the Medicaid program, States have the option of providing services for individuals with speech, hearing, and language disorders. Services for individuals with speech, hearing, and language disorders historically have been permitted under the Secretary's discretionary authority under section 1905(a)(11) of the Act, which authorizes the Medicaid program to make Federal funding available for State expenditures under an approved State Medicaid plan for audiology services for eligible individuals provided by audiologists meeting the provider requirements stipulated in Federal regulations at 42 CFR 440.110(c). States have discretion to further define audiology services by specifying the amount, duration, and scope of the service. Furthermore, while States can elect whether they plan to provide audiology services to their adult Medicaid population, they are mandated to provide all medically necessary services to Medicaid-eligible persons under 21 years of age under the Federally mandated Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. Combined with requirements for providing services to children with disabilities under the Individuals with Disability Education Act (IDEA) (Pub. L. 105–17, enacted on June 4, 1997), Medicaid is responsible for payment of a substantial number of school-based speech, hearing, and language services provided by, or under the direction of, qualified providers defined at § 440.110(c).

Under Medicaid, States are permitted the flexibility to provide audiology services under a variety of benefits. The majority of States offering audiology services do so under their home health benefit defined at § 440.70, or under optional benefits such as the therapies benefit defined at § 440.110, the rehabilitation benefit defined at § 440.130(d), or the clinic benefit defined at § 440.90. However, regardless of the benefit used to provide audiology services, the specific provider requirements at § 440.110(c) must be adhered to. Current Medicaid rules governing audiology services also permit States the flexibility to provide audiology services by, or under the direction of, a qualified audiologist. This flexibility is recognized and widely used by States to provide audiology services to Medicaid-eligible children under IDEA in school-based settings.

Existing regulations at § 440.110(c)(2) require audiologists to hold a certificate of clinical competency from the American Speech-Hearing-Language Association (ASHA), or its equivalent, to furnish audiology services. Individuals with speech, hearing, and language disorders must be referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law.

B. Medicare Audiology Requirements

Before the Social Security Amendments of 1994 (Pub. L. 103–432, enacted on October 31, 1994), statutory requirements governing the Medicare program required speech pathologists and audiologists to meet the academic and clinical experience requirements for a Certificate of Clinical Competence (CCC–A) granted by ASHA. In accordance with section 146 of the Social Security Amendments of 1994, Medicare revised its statutory requirements for speech pathologists and audiologists, removing the requirement for ASHA certification and placing primary reliance for determining provider qualifications on State licensure.

In summary, section 1861(ll)(3)(B) of the Act currently governing Medicare audiology services, defines an audiologist as an individual with a master's or doctoral degree who is licensed by the State or who meets specific academic and clinical requirements if providing services in a State that does not license audiologists.

Unlike the Medicaid program, Medicare does not permit audiology services to be provided under the direction of a qualified audiologist.

C. Creating Consistency With the Medicare Program

As noted in our April 2, 2003, proposed rule (68 FR 15974), the revision of the Medicare requirements in 1994 prompted letters from audiology professionals and interested congressional members urging us to create consistency in the Medicaid and Medicare programs' definition of a qualified audiologist by adopting the Medicare definition of qualified audiologist to recognize the role of State licensure in defining a Medicaid qualified audiologist. Proponents recommending the change stated that

the Medicaid definition had not changed in over 20 years and predated the national trend toward greater reliance on State determinations of professional qualifications through licensure. Our April 2, 2003, proposed rule noted that our initial responses to letters urging consistency expressed reluctance to change the Medicaid requirements due to the potential of adversely affecting quality and access to care as well as State flexibility. In addition, we noted our concern about adversely impacting services provided to children receiving school-based audiology services under IDEA since school providers are often exempt from State licensure laws.

As we discussed, continued requests to reconcile the differing definitions prompted us to consider options for changing the Medicaid regulations in a manner that would not compromise State flexibility and quality of care. As we stated in our April 2, 2003, proposed rule, the revised requirements are a result of meetings and interviews with parties most likely to be affected by such a change.

As in the April 2, 2003, proposed rule, we again note that this rule addresses the qualifications of audiologists as defined under § 440.110(c). The requirements under § 440.110(c)(2) addressing qualified speech-language pathologists (SLPs) remain as defined in existing regulations.

II. Provisions of the Proposed Regulations

On April 2, 2003, we published a proposed rule in the **Federal Register** that specified our intent to revise the existing Medicaid regulations governing audiologists to adopt the Medicare standards to recognize State licensure as a qualifying provider standard. Unlike Medicare's standards, however, we proposed to apply the ''default'' standards to States that license, as well as to those States that do not license audiologists or that have specific licensure exemptions. Thus, all audiologists are required to have met specific academic and clinical standards, regardless of whether they practice in a State that has a licensure program, no licensure program, or that exempts certain audiologists from licensure. As we indicated in the April 2, 2003, proposed rule, the revised requirements also serve to recognize the autonomy of the professions of audiology and speech-language pathology by adding a new paragraph (c)(3) § 440.110 to separately define a qualified audiologist. We also stated that the revised audiology requirements increased State flexibility in determining who is qualified to provide Medicaid audiology services. We noted that our research of national audiology usage and review of currently approved Medicaid State Plans also led us to conclude that most, if not all, qualified audiologists currently enrolled in the Medicaid program will continue to be qualified as a result of the continued flexibility in this rule. We commented on our expectation that States will continue to provide audiology services using the flexibility already granted under the Medicaid program to provide audiology services using individuals meeting State provider qualifications and working within State practice acts ''under the direction of'' a qualified Medicaid audiologist.

Additionally, we noted that conforming the Medicare and Medicaid provider requirements serve to eliminate the confusion providers may experience in complying with Federal rules and help to reduce or eliminate conflict where audiologists provide services to both the Medicaid and Medicare populations. We also pointed out that the revised standards eliminate inconsistencies in Medicaid provider standards and eliminate the need for equivalency rulings, which were administratively burdensome and time-consuming for States to obtain.

Finally, because the authority to provide services under direction remains unchanged, the preamble of the April 2, 2003, proposed rule included our guidance on providing audiology services ''under the direction of.'' We included the guidance in response to requests for our interpretation of acceptable standards of practice when providing services under the direction of a qualified audiologist.

III. Analysis of and Responses to Public Comments

We received 107 timely letters containing over 1,323 public comments in response to the April 2, 2003, proposed rule. The comments came from a variety of correspondents, including professional associations, physicians, health care workers, State Medicaid programs, and members of the Congress. We reviewed each commenter's letter and grouped like or related comments. After associating comments, we placed them in categories based on subject matter or based on the section(s) of the regulations affected and then reviewed the comments. All comments relating to general subjects, such as the format of the regulations, were similarly reviewed. This process identified areas of the proposed regulation that required review in terms of their effect on policy, consistency, or clarity. The following is a summary of the comments received and our response to those comments.

Reconciling Medicare and Medicaid Definitions

Comment: Fifty-two commenters stated they thought it important for us to speak with one voice on who is a qualified audiologist to reconcile the Medicare and Medicaid rules.

Response: As stated in the April 2, 2003, proposed rule, the primary purpose for revising the existing audiology provider requirements is to reconcile the Medicare and Medicaid definitions. We agree it is important for us to create consistency in the Medicare and Medicaid programs wherever possible. We believe our proposal incorporating State licensure as a standard defining a qualified Medicaid audiologist helps to bring the two definitions into closer conformity and creates increased flexibility for States and providers of audiology services.

State Licensure

Comment: Sixty-three commenters stated that deferring to State licensure is the most appropriate course of action since many new audiology graduates are declining to purchase private certification and many who previously purchased their private certification are no longer doing so, choosing instead to rely on State licensure. Many also stated that State licensure, rather than private certification, is the most widespread system for determining the qualifications of health care professionals and best serves the goal of consumer protection. The majority of these commenters also said that recognition of State licensure serves to improve access to audiology services, particularly in rural States where ASHA-certified individuals are not always available.

Response: As proposed, the revised Medicaid standards incorporate recognition of State licensure in defining a qualified Medicaid audiologist. As we stated in the proposed rule, we believe recognition of State licensure will afford States increased flexibility in determining who is qualified to provide Medicaid audiology services, thereby increasing the provider pool of ''qualified'' individuals.

Comment: Two commenters expressed support of the proposal to recognize State licensure, but stated that if private certification is mentioned in our rules, the American Board of Audiology certification must be included.

Response: While we appreciate the intention behind this suggestion, we do not plan to specifically cite the American Board of Audiology certification as a qualifying standard since the primary purpose in revising the Medicaid audiology standards is to recognize the role of State licensure. Continued reference and reliance on the ASHA CCC–A in the final rule serves to continue our recognition of individuals currently qualified and enrolled in the Medicaid program by virtue of their ASHA certification. In addition, retention of ASHA certification as a provider standard helps ensure that those individuals who are dually certified as speech-language pathologists and audiologists do not face additional compliance burdens by having to comply with two different standards within the Medicaid program itself.

Comment: Twenty-seven respondents stated they supported the generic definition of an audiologist in instances where State licensure does not exist or where there are special provider exemptions. One commenter felt the proposed standardized definition would enhance access to services by virtue of removing any confusion regarding the qualifications of the individuals(s) providing the needed services. Others commented that the generic definition of an audiologist is very important for those States, and those circumstances, where licensure does not exist or apply, particularly since a State license should determine ability to practice—not membership in a political lobbying group. A few commenters who expressed support of the generic definition also stated that the generic definition helped resolve concerns around licensure exemptions of school-based audiology providers.

Response: We agree that the generic definition of an audiologist is very important for those States, and in those circumstances, where licensure does not exist or apply. As we noted previously, the proposed ''generic standards'' serve to provide additional consumer protections by ensuring that Medicaid audiology services continue to be provided by, or under the direction of, professionally recognized individuals who have completed academic and clinical training programs consisting of demonstrated high quality industry standards.

Comment: Two respondents expressed overall support of the revised standards but strongly encouraged us to recognize State licensure as the *sole* national standard for defining qualified audiologists.

Response: We do not believe recognition of State licensure as the *sole* national standard for defining qualified audiologists is in the best interests of the Medicaid population. As stated in the April 2, 2003, proposed rule, because many States either choose not to license audiologists or exempt audiologists practicing in specific settings from licensure, we believe it imperative that we also incorporate quality standards defining qualified audiologists that guarantee Medicaid-eligible individuals receive services from recognized, qualified professionals in their field.

Comment: One respondent supported the April 2, 2003, proposed rule but expressed concern that the requirement of 350 clock-hours of supervised clinical practicum creates a more restrictive environment than current State licensure requirements. The respondent stated that ''this restriction would reduce the number of audiologists available to the Medicaid population and increase the provider registration burden to the local program to verify training hours rather than simply verifying licensure.''

Response: As stated in the April 2, 2003, proposed rule, we believe the inclusion of minimum standards relating to the provision of Medicaid audiology services serves to address concerns about quality of care in instances where State licensing does not apply. In addition, the proposed Medicaid standards are consistent with the Medicare program standards, helping to further create consistency between the two programs.

We note, however, that we are unclear as to this comment since States currently are required to meet the existing Medicaid requirements at § 440.110(c), which require that an individual be ASHA-certified or working toward certification. Since ASHA certification requires a minimum of 375 clock-hours of clinical practicum, we do not believe the proposed requirement of 350 clinical clock-hours is more restrictive. In addition, we believe States continue to enjoy the additional flexibility afforded them under the Medicaid program since the proposed standards retain the provision permitting audiology services to be provided under the direction of a qualified audiologist.

We also should point out that as a usual and customary business activity, the Medicaid program requires States to ensure that enrolled Medicaid providers meet all qualification requirements set forth in Federal and State law. Providers of Medicaid services must be in compliance with any relevant Federal provider requirements at the time services are furnished to appropriately claim and receive Medicaid reimbursement.

ASHA Certification

Comment: Twenty-three respondents expressed support for the April 2, 2003, proposed rule and retention of the CCC–A. The respondents stated they are pleased that we recognize the need to retain the CCC–A as the professional industry standard that ensures quality services continue to be provided to Medicaid beneficiaries. Many specifically stated concern that removal of the CCC–A would present a special problem for Medicaid services furnished in the school setting, especially where a teacher's certificate is used in lieu of State licensure. Four additional commenters felt that continued reliance on the ASHA CCC–A retains compliance for dually certified individuals and ensures reciprocity.

Seventeen commenters supported retaining ASHA certification, specifically because they believe State licensure alone is not a sufficient tool to establish competency. They stated that because not all States license audiologists and because not all States have universal licensure, reliance on State licensure results in audiology services being provided by lesser or unqualified individuals.

Two commenters stated that we should retain the current rule and reliance on ASHA. They believe that the CCC–A should continue to be the primary credentialing authority so as not to weaken the quality of the workforce and quality of care.

Response: Our proposed definition of a qualified audiologist continues recognition of the CCC–A as a standard for determining qualifications to provide Medicaid audiology services. As we noted, the existing requirements at § 440.110(c)(2), which rely on ASHA certification or its equivalent to define a Medicaid speech-language pathologist, remain unchanged. Therefore, retention of the CCC–A serves to maintain consistency in provider standards within the Medicaid program, as well as limit the administrative burden to States and to individuals who are dually certified. In addition, as we stated above, we believe the standards requiring specific academic achievements and clinical training proposed in this rule serve as added protection to ensure services are provided by professionally recognized and qualified audiologists.

Comment: We received nine comments in support of the proposed rule but objecting to mandating

affiliation with ASHA or any credentialing bodies to receive reimbursement for Medicaid audiology services. Three additional respondents stated they do not support continued reliance on ASHA stating that it is a monopoly with no value to its membership.

Response: While it is not our role to comment on the personal merits of membership in national organizations, it is our role to ensure that Medicaid beneficiaries receive services from professionally recognized, highly qualified individuals in the field of audiology. Federal and private deeming agencies have recognized the CCC–A as a quality credentialing program for over 30 years. Thus, Medicare and Medicaid regulations governing speech, language, and hearing services have historically placed reliance on the knowledge and skills inherent with ASHA certification. Our intent in revising the Medicaid standards is not to eliminate reliance on those quality standards but to conform the Medicare and Medicaid programs through recognition of State licensure to define a qualified audiologist. Our revised standards continue recognition of ASHA certification, not only because it is a recognized industry quality standard, but more importantly because it ensures continuity and reciprocity for those providers who are dually certified and/or currently enrolled in the Medicaid program by virtue of certification. Thus, ASHA certification is no longer mandated, but is retained as one method by which individuals qualify to provide, or continue to provide, Medicaid audiology services.

Support April 2, 2003, Proposed Rule

Comment: We received a considerable number of comments in support of the April 2, 2003, proposed rule overall. In summary, seventy-three commenters wrote in strong support of the rule and urged us to finalize. Forty-five of these same commenters stated they believe the April 2, 2003, proposed rule would improve access to Medicaid audiology services. Sixty-three stated they supported recognition of State licensure, twenty-seven thought the generic definition of an audiologist very important in States and instances where licensure does not exist or apply, and fifty-two said they thought it important that we reconcile the Medicare and Medicaid rules defining a qualified audiologist.

Opposed to April 2, 2003, Proposed Rule

Comment: We received a total of thirteen timely letters containing a variety of comments in opposition to the April 2, 2003, proposed rule. Eight commenters expressed opposition to the April 2, 2003, proposed rule ''urging CMS to make significant revisions to correct the severe flaws in this regulation'' and stating the rule ''inappropriately and broadly expands the scope of practice of audiologists, presenting grave patient care concerns and devastating consequences on the quality of health care available to Medicaid patients with hearing disorders.''

Several others also commented that the April 2, 2003, proposed rule subverts a physician's role as the first point of patient contact. Specifically, commenters stated that hearing and balance disorders are medical conditions that require a full history and physical examination by a physician and a medical diagnosis with medical management and treatment options presented and pursued by a physician. Other commenters stated that audiologists do not and should not engage in prescribing care for hearing and balance disorders. Several commenters stated, ''audiologists and speech-language pathologists, as non-physician health professionals, simply do not possess the training necessary to carry out medical responsibilities that physicians do.'' Five commenters stated the rule should specifically include physicians as providers.

Two commenters opposed the rule stating that we should retain the current rule and the ASHA CCC–A to avoid weakening the quality of workers and care.

Response: The requirements finalized in this rule address our commitment to conform the Medicare and Medicaid programs through recognition of State licensure as a qualifying Medicaid standard. It does not change the scope of practice of professional audiology services. It also does not alter the current role of physicians in evaluating and determining an individual's need for audiology services. Existing regulations at § 440.110(c) require that an individual be referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law before the receipt of audiology services. Therefore, physicians and other licensed practitioners practicing within the scope of State law continue to play an important role in ensuring that individuals receive appropriate medical evaluations and assessments to diagnose the need for audiology services. We agree with the comment that audiologists do not possess the training necessary to carry out the medical responsibilities of physicians and therefore should provide only those audiology services within the scope of practice governing their profession.

Also in response to the above comments, we again point out that the Medicaid program permits speech-language and hearing services to be provided by physicians or under the supervision of physicians, under Medicaid's physician services benefit in accordance with regulations at § 440.50. Audiology services may be provided under this benefit as the qualifications of a physician can be construed as including those of providers of speech-language and hearing services as long as their services are provided ''within the scope of practice of medicine or osteopathy as defined by State law * * * or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy.''

Thus, in response to the comment to include physicians in our final rule, we do not plan to adopt this suggestion. As noted above, Medicaid regulations continue to require a physician referral before receipt of audiology services as defined under § 440.110(c). In addition, Medicaid regulations at § 440.50 permit physicians working within State practice acts to provide, or supervise the provision of, audiology services.

In response to the comments opposing the April 2, 2003, proposed rule in favor of retaining the existing requirement for ASHA certification due to quality concerns, we believe our proposed standards, which include recognition of State licensure, combined with specific academic and clinical training standards and continued recognition of ASHA certification, continues our commitment to ensure a quality workforce and quality care.

Comment: We received seven comments in opposition to the April 2, 2003, proposed rule because ''it established a gatekeeper role and impedes access to hearing health care services by facilitating establishment of a gatekeeper system of care and inappropriately placing audiologists as gatekeepers to Medicaid hearing services.''

Response: See our detailed response to comments on physician involvement above. We do not believe the April 2, 2003, proposed rule inappropriately places audiologists as gatekeepers to Medicaid hearing services since § 440.110(c) continues to require a referral by a physician or other licensed practitioner of the healing arts before receipt of audiology services. Our proposed standards address reconciling the Medicare and Medicaid provider requirements through recognition of State licensure and do not authorize

broadening the scope of audiology services beyond the parameters of the profession.

Regarding the above, we wish to note our concern that a number of the comments we received regarding the role of physicians in providing Medicaid audiology services are the result of the guidance included in the preamble of the April 2, 2003, proposed rule, which offered our interpretation for appropriately providing services under the direction of a qualified audiologist. We believe we may have inadvertently caused some confusion by using terminology typically associated with physician services, and not audiology services. Specifically, our use of phrases such as ''*prescribe* the type of care provided'' and ''to ensure beneficiaries are receiving services in a safe and efficient manner in *accordance with accepted standards* of *medical practice*,'' apparently gave some readers the impression that we intend to expand the scope of practice for participating audiologists. We did not intend to do so.

Therefore, as noted below, the guidance regarding services provided ''under the direction of'' in this final rule has been revised to include language more appropriately reflecting the nature and scope of professional practice for audiologists providing Medicaid services.

Miscellaneous Comments

Comment: One commenter expressed concern that the April 2, 2003, proposed rule eliminates hearing aid specialists from Medicaid stating that ''hearing aid specialists are integral members of the hearing healthcare team as they assess hearing and select, fit, and dispense hearing aids and related devices while providing instruction, rehabilitation, and counseling in the use and care of hearing aids and related devices.''

Response: We do not agree that this final rule eliminates hearing aid specialists from participation in the Medicaid program. Further, this final rule will not affect the ability of hearing aid specialists to provide Medicaid-funded services. Currently, under Medicaid, it is possible for a hearing aid specialist to provide and receive Medicaid payment for services if he or she meets the provider requirements at § 440.110(c) and if the State offers those services under its Medicaid program. Individuals not meeting the specific requirements at § 440.110(c) may still be eligible to provide services ''under the direction of'' if so permitted within their scope of practice under State law. In addition, hearing aid services may be reimbursed depending upon the method in which they are covered under a State's Medicaid plan. For example, if hearing services are being provided by individuals licensed in the State as physicians, or under the supervision of a physician as defined in the Medicaid's physician services benefit at § 440.50, then providers must meet the provider qualifications applicable to those requirements. Providers must meet those qualifications because the qualifications of a physician can be construed as subsuming those of providers of speech-language and hearing services when they are provided as physician services.

Comment: Two respondents expressed concern that their organizations were not included in discussions and meetings before publication of the April 2, 2003, proposed rule. One ''respectfully urges its inclusion whenever issues relating to hearing health are considered.'' The other ''* * * would like to request a meeting to discuss these issues, and any other speech, language, and hearing health care issues of interest to CMS.''

Response: It was not our intent to exclude any particular group or organization from participating in discussions and meetings before publication of the April 2, 2003, proposed rule. As we stated in the preamble, the intent of the contacts before publication was to gain an understanding of the implications change would have on Medicaid programs, providers, and beneficiaries. While we believe the information gained achieved that goal, we acknowledge and appreciate the commenters' interest in the Medicaid program and the formation of its rules and policies. As always, we wish to remain responsive to all concerns and welcome future opportunities to discuss issues of mutual interest.

Services Provided ''Under the Direction of''

Comment: Fourteen respondents commented positively on the guidance for providing services under the direction of a qualified audiologist. All urged us to strengthen the guidance to better ensure that Medicaid beneficiaries receive audiology services provided, or appropriately supervised, by a qualified audiologist. Three of the respondents suggested we establish what constitutes an appropriate supervisory ratio of Medicaid qualified providers v. ancillary support staff consistent with State laws and practices. They also believe we should set appropriate ratios of direct contact/supervisory time with the Medicaid recipient for both assessment and intervention. One commenter suggested strengthening our policy to advise audiologists in supervisory roles what recourse options they have if asked to supervise more ancillary support staff than is ethically reasonable, and to require States and school systems to provide ancillary support staff with the ability to reach the qualified audiologist by means of personal contact, telephone, pager, or other immediate means.

Response: We appreciate the commenters' concerns and suggestions on ways to strengthen the guidance for providing services under direction. In response to the suggestion that we establish staffing ratios, we are not establishing a ratio of providers to ancillary staff because we believe this is best done by States in a manner that addresses the unique circumstances within the State. In addition, we believe placing specific requirements on States may go beyond the authority of the guidance contained in this document and would require revisions to the regulatory requirements at § 440.110(c). We have, however, incorporated more general language offering our guidance with respect to staffing ratios by stating that we expect contractual agreements between providers to include requirements such as appropriate supervisory ratios and information on reporting instances of abuse of ethical practices. In response to the suggestion to require States and school systems to provide contact information, we revised the guidance to indicate our expectation that individuals working under the direction of a qualified audiologist be given contact information to enable them to directly contact the supervising audiologist as needed during treatment.

We also would like to say that our guidance in this area is evolving, particularly as it relates to speech-language and hearing services provided to Medicaid-eligible children in schools. We anticipate that we will continue to update and provide guidance as necessary to States and providers through various means such as *State Medicaid Manual* guidelines, letters to State Medicaid Directors, and educational documents, as well as direct technical assistance to State Medicaid agencies.

IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule. Thus, we are adopting the provider standards in the proposed rule as final.

Thus, this regulation creates a separate definition at § 440.110(c)(3) pertaining to qualified audiologists under the Medicaid program. We are making a minor technical revision to

§ 440.110(c)(2) to remove the reference to audiologists. Section 440.110(c)(1) remains unchanged and continues to require ''a patient be referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law'' to receive Medicaid audiology services.

In addition, although not part of the standards affected by this final rule, we are reiterating the guidance for providing services ''under the direction of.'' The guidance is intended as our interpretation of appropriate practice standards when providing audiology services under direction set forth § 440.110(c)(1). In response to public comments, we have made some revisions to clarify and eliminate confusion regarding an audiologist's scope of practice and to strengthen the guidance to ensure quality services are being provided in an appropriate and professional manner (specific responses to respondents' comments are addressed in section III).

''Under the Direction of''

Audiology services provided under § 440.110(c)(1) require that the ''services be provided by or under the direction of an audiologist for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law.''

We interpret the authority to provide services ''under the direction of'' an audiologist to mean that a federally qualified audiologist who is directing audiology services must supervise each beneficiary's care. To meet this requirement, the qualified audiologist must see the beneficiary at the beginning of and periodically during treatment, be familiar with the treatment plan as recommended by the referring physician or other licensed practitioner of the healing arts practicing under State law, have continued involvement in the care provided, and review the need for continued services throughout treatment. The supervising audiologist must assume professional responsibility for the services provided under his or her direction and monitor the need for continued services. The concept of professional responsibility implicitly supports face-to-face contact by the qualified audiologist at least at the beginning of treatment and periodically thereafter. Thus, audiologists must spend as much time as necessary directly supervising services to ensure beneficiaries are receiving services in a safe and efficient manner in accordance with accepted standards of practice. To ensure the availability of adequate supervisory direction, supervising audiologists must ensure that individuals working under their direction have contact information to permit them direct contact with the supervising audiologist as necessary during the course of treatment.

In many cases, qualified audiologists are employed by entities such as a Medicaid agency, clinic, or school. In such instances, the terms of the audiologist's employment must ensure that the audiologist is adequately supervising any individual providing audiology services. In addition to the supervisory requirements described above, employment terms should provide for supervisory ratios that are reasonable and ethical and in keeping with professional practice acts in order to permit the supervising audiologist to adequately fulfill his or her supervisory obligations and ensure quality care.

In all cases, documentation must be kept supporting the qualified audiologist's supervision of services and ongoing involvement in the treatment services. Because Medicaid law requires that documentation be kept supporting the provision and proper claiming of services, appropriate documentation of services provided by supervising audiologists, as well as services performed by individuals working under the direction of a qualified audiologist, are necessary. Absent appropriate service documentation, Medicaid payment for services may be denied providers.

Where appropriate, audiology services must adhere to all State requirements and State practice acts governing the provision of services under the direction of a qualified audiologist. As with all Medicaid benefits that permit services furnished under direction, both Federal and State requirements must be met at the time services are furnished for the Medicaid program to appropriately provide Federal financial participation for services furnished on behalf of Medicaid eligible individuals.

V. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993), Regulatory Planning and Review, the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is 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 (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We are unable to provide a specific dollar estimate of the economic impact this final regulation will have on State and local governments and participating providers. Because the flexibility permitted under Medicaid allows States to provide audiology under various Medicaid benefits, it is not possible to capture accurate expenditure data.

We have determined, however, that this rule is not a major rule under Executive Order 12866, and that this rule will not have a significant economic impact on a substantial number of small entities. We have made this determination because while we believe this rule will permit States to have more flexibility in determining who is qualified to provide audiology services, we do not anticipate any increase in States' use of audiology services due to this regulation. Section 804(2) of title 5, United States Code (as added by section 251 of Pub. L. 104–121), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises in domestic and export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless we have determined that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities.

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 hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, audiologists that generate total revenues of $6 million or less in any 1 year are considered to be small entities. The Small Business Administration (SBA) categorizes small businesses for audiologists along with physical, occupational, and speech therapists. The total number of providers within this category that have total revenues of between $5 million and $7.5 million or less in any 1 year is 23,823 that they consider small businesses. Those firms and establishments with total revenue above $7.5 million are not considered small businesses according to the SBA. Therefore, approximately 0.92 percent of audiologists are considered small businesses. (For further information on the SBA size standards, *see* 65 FR 69432.)

In addition, section 1102(b) of the 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 hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals. The Medicaid program permits States the flexibility to provide audiology services under a variety of benefits. The majority of States do so under the home health benefit, the therapies benefit, and the rehabilitation benefit serving a variety of Medicaid beneficiaries. In addition, current Medicaid rules permit States the flexibility to provide audiology services by, or under the direction of, a qualified audiologist. This provider flexibility is recognized by States and is widely used to provide audiology services to children through school-based services programs. Because this rule retains the ability for audiology services to be provided ''under the direction of,'' the rule will not have an impact on how States currently provide services to their Medicaid populations. Therefore, small rural hospitals are not affected.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We do not anticipate this rule will have an effect on the States, local, or tribal governments, or on private sector costs. As we stated earlier, this regulation gives States more flexibility in determining qualified audiologists thereby giving them the ability to choose from a larger provider pool of ''qualified'' individuals. However, because we expect the primary users of Medicaid audiology services, such as children and seniors, to remain fairly constant, we do not anticipate any significant increase in the use of audiology services due to this rule. In addition, because Medicaid audiology services are optional for States to provide to their Medicaid populations, many States choosing to do so limit utilization in some manner. In addition, many States limit the use of optional services such as audiology in favor of mandatory Medicaid benefits. States providing audiology services to children under the EPSDT program primarily do so as part of their school based services program under IDEA. Since all 50 States currently have a school-based services program in operation, we do not anticipate this rule to have any significant effect on audiology services provided to Medicaid children.

Additionally, recognizing that States currently use the flexibility permitted in the Medicaid law to provide audiology services ''under the direction of'' a qualified audiologist, we expect States will continue to do so by providing audiology services using individuals working under the supervision of qualified audiologists.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts a State law, or otherwise has Federalism implications. We do not believe this rule in any way will impose substantial direct compliance costs on State and local governments or preempts or supersedes State or local law. This rule permits States to use State-licensed audiologists to provide Medicaid audiology services, thereby giving them increased flexibility in providing Medicaid audiology services. In addition, after researching national audiology usage and reviewing States' currently approved Medicaid State Plans, we anticipate that most, if not all, qualified audiologists currently enrolled in the Medicaid program will continue to be qualified as a result of the continued flexibility established in this rule. For this reason, we do not believe that the change in requirements for audiologists included in this rule will result in reduced access to services, or otherwise result in fewer audiology services available through the Medicaid program. We also anticipate that States will continue to provide audiology services by using the additional flexibility already granted under the Medicaid program to provide audiology services using individuals meeting State provider qualifications and working within State practice acts ''under the direction of'' a qualified Medicaid audiologist. We believe the additional flexibility set forth in this rule to recognize State licensure will serve to enhance States' ability to provide services. We do not, however, anticipate this rule will have a significant effect on the actual provision of audiology services in State Medicaid programs, and, therefore, the rule does not have Federalism implications.

B. Anticipated Effects

We anticipate this rule will give States increased flexibility in determining who is a Medicaid-qualified audiologist. We also anticipate that the quality care standards established in this rule will help ensure that Medicaid audiology services continue to be provided by, or under the direction of, highly qualified and trained individuals. Additionally, we believe conforming the Medicare and Medicaid provider requirements will help eliminate any confusion providers may experience in complying with Federal rules and help reduce or eliminate conflict where audiologists provide services to both the Medicaid and Medicare populations (such as in nursing facilities or through home health care agency providers). Additionally, this final rule also serves to eliminate inconsistencies in Medicaid provider standards by no longer recognizing equivalency rulings. Under the current Medicaid rules, States can seek equivalency rulings from their State Attorney General in instances where they believe State licensure is equivalent to ASHA certification. Since this rule recognizes State licensure that meets Medicare-equivalent standards, equivalency rulings are no longer necessary or required. We believe States will look favorably on the elimination of equivalency rulings since they proved administratively burdensome and time-consuming to obtain.

C. Alternatives Considered

In developing the policies set forth in this rule, we met with professional organizations and interested parties to solicit their ideas and concerns. We also worked with our national regional office staffs to review currently approved Medicaid State Plans for information on the provision of audiology services in States' Medicaid programs. We considered the role of audiology services in the Medicaid program and the potential impact changes in the standards for audiology providers will have overall. We considered several options that suggested we— (1) make no change to the current Medicaid audiology requirements; (2) retain current requirements but issue updated policy guidance on issues such as provider equivalency authority; (3) rewrite the current Medicaid regulations to adopt the current Medicare requirements; and (4) rewrite the current Medicaid regulations to adopt the Medicare standards, but with minimum standards that apply in States that license as well as those that do not license or that exempt some practitioners from State licensure requirements.

After much research and consideration of the impact of each of the options, we concluded that option 4—the standards contained in this rule—best satisfies the Secretary's intention, and addresses the request raised by interested parties, to conform the definition of a qualified audiologist under the Medicare and Medicaid programs by recognizing the role of State licensure as a Medicaid provider requirement. We also concluded that the standards in this rule best continue to recognize the broad program discretion granted States under Medicaid by retaining program flexibility while at the same time also building in quality standards that continue to ensure Medicaid services are provided to all Medicaid-eligible individuals by recognized, highly trained professionals.

D. Conclusion

For the reasons stated above, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected in 42 CFR Part 440

Grant programs—Health, Medicaid.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

Subpart A—Definitions

■ 1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. In § 440.110, paragraph (c)(2) is revised, and a new paragraph (c)(3) is added to read as follows:

§ 440.110 Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

* * * * *

(c) * * *

(2) A ''speech pathologist'' is an individual who meets one of the following conditions:

(i) Has a certificate of clinical competence from the American Speech and Hearing Association.

(ii) Has completed the equivalent educational requirements and work experience necessary for the certificate.

(iii) Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(3) A ''qualified audiologist'' means an individual with a master's or doctoral degree in audiology that maintains documentation to demonstrate that he or she meets one of the following conditions:

(i) The State in which the individual furnishes audiology services meets or exceeds State licensure requirements in paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section, and the individual is licensed by the State as an audiologist to furnish audiology services.

(ii) In the case of an individual who furnishes audiology services in a State that does not license audiologists, or an individual exempted from State licensure based on practice in a specific institution or setting, the individual must meet one of the following conditions:

(A) Have a Certificate of Clinical Competence in Audiology granted by the American Speech-Language-Hearing Association.

(B) Have successfully completed a minimum of 350 clock-hours of supervised clinical practicum (or is in the process of accumulating that supervised clinical experience under the supervision of a qualified master or doctoral-level audiologist); performed at least 9 months of full-time audiology services under the supervision of a qualified master or doctoral-level audiologist after obtaining a master's or doctoral degree in audiology, or a related field; and successfully completed a national examination in audiology approved by the Secretary.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 23, 2004.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: February 23, 2004.

Tommy G. Thompson,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on May 25, 2004.

[FR Doc. 04–12096 Filed 5–27–04; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 99–217; FCC 04–41]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: In this document the Commission addresses four petitions seeking Reconsideration and/or Clarification of the Commission's determination to extend to users of fixed-wireless telecommunications antennas the same OTARD (Over-the-Air-Reception Devices) protections previously available to customers of multi-channel video service.

DATES: Effective July 27, 2004.

FOR FURTHER INFORMATION CONTACT: Cara Voth, Broadband Division, Wireless Telecommunications Bureau, at (202) 418–0025.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, (Order) released on March 24, 2004 (FCC 04–41). The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased

from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* Additionally, the complete item is available on the Commission's Web site at *http://www.fcc.gov/wtb.*

I. Prodedural Matters

A. Regulatory Flexibility Act

1. A Regulatory Flexibility Analysis is not required because this order does not promulgate or revise any rules.

2. This action is taken pursuant to sections 4(i), 303, and 405 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 154(i), 303, and 405.

II. Ordering Clauses

3. The Petition for Reconsideration filed by Real Access Alliance, Inc., is denied.

4. The Petition for Partial Reconsideration filed by the Wireless Communications Association, Inc., is granted.

5. The Petition for Clarification and Partial Reconsideration filed by the Satellite Broadcasting Industry Association and Satellite Industry Association, Broadband and Internet Division, is granted.

6. The Petition for Reconsideration filed by Triton Network Systems, Inc., is granted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–12164 Filed 5–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[WT Docket No. 98–20; RM–8677; FCC 98–234]

Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted a new rule requiring that each applicant for a unicom license, renewal or modification of frequency assignment at an airport which does not have a control tower, Remote Communications Outlet or Federal Aviation Administration flight service station must certify in the application that either it has notified in writing the owner of the airport and all aviation service organizations located at the airport, or that such notice is not required because the applicant owns the airport and there are no organizations that should be notified. The rule contains new or modified information collection requirements and was published in the **Federal Register** on December 14, 1998. This document announces the effective date of that published rule.

DATES: The amendment to § 87.215(d) published at 63 FR 68957, December 14, 1998, became effective on February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *jeff.tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: On February 19, 1999, the Office of Management and Budget (OMB) approved the information collection requirements contained in section 87.215(d) pursuant to OMB Control No. 3060–0865. Accordingly the information collection requirements contained in this rule became effective on February 19, 1999.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–12047 Filed 5–27–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, 176, 177, and 178

[Docket No. RSPA–98–4952 (HM–223)]

RIN 2137–AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On October 30, 2003, RSPA published a final rule (68 FR 61905) to clarify the applicability of the Hazardous Materials Regulations to loading, unloading, and storage operations. RSPA is delaying the effective date of the final rule from October 1, 2004 to January 1, 2005.

DATES: The effective date of the final rule amending 49 CFR Parts 171, 173, 174, 175, 176, 177, and 178 published at 68 FR 61905 on October 30, 2003, is delayed until January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or Donna O'Berry (202) 366–4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2003, the Research and Special Programs Administration (RSPA, we) published a final rule to clarify the applicability of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation (68 FR 61906). The final rule amended the HMR to incorporate the following new definitions and provisions:

• We defined a new term—''pre-transportation function''—to mean a function performed by any person that is required to assure the safe transportation of a hazardous material in commerce. When performed by shipper personnel, loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel and filling a bulk packaging with hazardous material in the absence of a carrier for the purpose of transporting it is a pre-transportation function as that term is defined in this final rule. Pre-transportation functions must be performed in accordance with requirements in the HMR.

• We defined ''transportation'' to mean the movement of property and loading, unloading, or storage incidental to the movement. This definition is consistent with the definition of ''transportation'' in Federal hazmat law. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation.

• We defined ''movement'' to mean the physical transfer of a hazardous

material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.

• We defined ''loading incidental to movement'' to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it. For a bulk packaging, ''loading incidental to movement'' means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. Loading incidental to movement is regulated under the HMR.

• We defined ''unloading incidental to movement'' to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after a hazardous material has been delivered to a consignee and prior to the delivering carrier's departure from the consignee facility or premises. Unloading incidental to movement is subject to regulation under the HMR. Unloading by a consignee after the delivering carrier has departed the facility is not unloading incidental to movement and not regulated under the HMR.

• We defined ''storage incidental to movement'' to mean storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. However, in the case of railroad shipments, even if a shipment has been delivered to the destination shown on the shipping document, if the track is under the control of a railroad carrier or track is used for purposes other than moving cars shipped to or from the lessee, storage on the track is storage incidental to movement. We revised the definition of ''private track or private siding'' to make this clear. Storage at a shipper facility prior to a carrier exercising control over or taking possession of the hazardous material or storage at a consignee facility after a carrier has delivered the hazardous material is not storage incidental to movement and is not regulated under the HMR.

• We amended § 171.1 of the HMR to list regulated and non-regulated functions. Regulated functions include: (1) Activities related to the design, manufacture, and qualification of packagings represented as qualified for use in the transportation of hazardous materials; (2) pre-transportation functions; and (3) transportation functions (movement of a hazardous material and loading, unloading, and storage incidental to the movement). Non-regulated functions include: (1) Rail and motor vehicle movements of a hazardous material solely within a contiguous facility where public access is restricted; (2) transportation of a hazardous material in a transport vehicle or conveyance operated by a Federal, state, or local government employee solely for government purposes; (3) transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle; and (4) any matter subject to U.S. postal laws and regulations.

• We amended § 171.1 of the HMR to indicate that facilities at which functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies or to applicable state or local government laws and regulations (except to the extent that such non-Federal requirements may be preempted under Federal hazmat law). Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. The final rule was intended to clarify the applicability of the HMR to specific functions and activities. It is important to note that facilities at which pre-transportation or transportation functions are performed must comply with Occupational Safety and Health Administration (OSHA) and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities may also have to comply with applicable state and local regulations for hazardous materials handling and storage operations. Facilities at which pre-transportation or transportation functions are performed may also be subject to Environmental Protection Agency (EPA) and OSHA regulations. For example, facilities may be subject to EPA's risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure requirements, and OSHA's process safety management and emergency preparedness requirements. Similarly, facilities at which pre-transportation functions are performed may also be subject to regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concerning the handling of explosives.

II. Appeals of the Final Rule

We received 14 appeals of the final rule from Ag Processing Inc. (AGP); Akzo Nobel (Akzo); Archer Daniels Midland Company (Archer Daniels); the Association of American Railroads (AAR); the Dangerous Goods Advisory Council (DGAC); the Dow Chemical Company (Dow); DuPont; Eastman Chemical Company (Eastman); the Institute of Makers of Explosives (IME); Norfolk Southern Corporation (Norfolk Southern); the Spa and Pool Chemical Manufacturers' Association (SPCMA); the Sulphur Institute; the Utility Solid Waste Activities Group (USWAG); and Vermont Railway, Inc. (Vermont Railway).

Appellants raised a number of issues related to the consistency of the final rule with Federal hazardous materials transportation law; state and local regulation of hazardous materials facilities; the relationship of the HMR to regulations promulgated by OSHA, EPA, and ATF; the definitions adopted in the final rule for ''unloading incidental to movement,'' ''transloading,'' and ''storage incidental to movement;'' and the consistency of the HM–223 final rule with security regulations adopted in a final rule issued under Docket No. HM–232.

III. Delay of Effective Date

The issues raised by appellants concerning the October 30, 2003 final rule are detailed and complex. Delaying the effective date will provide us with sufficient time to fully address the issues raised by the appellants. It also provides us with sufficient time to coordinate the appeals document fully with the other Federal agencies that assisted us in developing the HM–223 final rule.

Issued in Washington, DC on May 24, 2004 under authority delegated in 49 CFR part 1.

Elaine E. Joost,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 04–12130 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA–2004–17530; Notice No. 1]

RIN 2130–AB62

Inflation Adjustment of the Maximum and Minimum Civil Penalties for a Violation of the Hazardous Materials Transportation Laws and Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: To comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, FRA is adjusting the minimum and maximum civil monetary penalties (CMP) that it will apply when assessing a penalty for a violation of the Federal hazardous material transportation laws and regulations. Consistent with past FRA practice, FRA's penalty increase will mirror that made by DOT's lead agency for administration of the hazardous materials transportation laws and regulations, the Research and Special Program Administration (RSPA). In particular, FRA is increasing the minimum civil penalty from $250 to $275 and the maximum civil penalty from $27,500 to $32,500.

DATES: *Effective Date:* June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa L. Porter, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6034).

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Act) requires that agencies adjust by regulation each maximum CMP, or the range of minimum and maximum CMPs within that agency's jurisdiction, by October 23, 1996 and adjust those penalty amounts once every four years thereafter to reflect inflation. (Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996.) The inflation adjustment is to be calculated by increasing the maximum CMP or the range of minimum and maximum CMPs by the percentage that the Consumer Price Index (CPI) for the month of the calendar year preceding the adjustment exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set or adjusted. These adjusted amounts are subject to a rounding formula found in section 5 of the Act, and the first adjustment may not exceed an increase of ten percent.

FRA is responsible for enforcement of the hazardous material transportation law and regulations primarily in instances where violations involve railroads and those who ship by rail. 49 CFR 1.49(s). The hazardous material transportation regulations are issued not by FRA, but by RSPA. 49 CFR 1.53(b). RSPA's regulations contain CMP provisions that are subject to the Act, and RSPA has twice amended its regulations by final rules to reflect changes in its maximum and minimum CMPs. FRA's minimum and maximum CMPs that it applies when assessing penalties for violations of the hazardous material transportation laws and regulations have historically mirrored RSPA's minimum and maximum CMPs that it applies when assessing penalties for violations of the hazardous material transportation laws and regulations.

The hazardous materials transportation law at 40 U.S.C. 5123 (a)(1) established a CMP for a knowing violation of the Federal hazardous material transportation law (49 U.S.C. ch. 51) or RSPA's regulations (49 CFR Parts 171–180), in an amount of ''at least $250 but not more than $25,000 for each violation.'' Pursuant to the Act, in a final rule published in the **Federal Register** on January 21, 1997, RSPA increased the maximum CMP for a violation from $25,000 to $27,500. 62 FR 2970. (This increase in the maximum CMP was subject to the initial rounding limitations discussed above.) Accordingly, on March 10, 1998, FRA issued a final rule that revised its own regulations and added a reference to FRA's previously issued policy statement concerning its enforcement of RSPA's regulations to reflect RSPA's increase in the maximum CMP. On September 8, 2003, RSPA again increased the maximum CMP, this time to $32,500, based on the increase in the CPI from June 1997 to June 2002. 68 FR 52844. (Because this was the second time RSPA had increased the maximum CMP under the Act, the increase in the maximum CMP was not subject to the 10 percent limit in the Act.) In this final rule, FRA is amending its regulations and policy statement once again to reflect the most recent change in RSPA's maximum CMP.

Prior to September 8, 2003, RSPA has not adjusted the $250 minimum CMP amount specified in its regulations. By the final rule issued in 2003, RSPA increased its minimum CMP to $275. 68 FR 52844. (Because it was a first time adjustment to the minimum CMP, the increase was subject to the 10 percent limitation required by the Act.) FRA is now amending its regulations and policy statement to reflect this change in RSPA's minimum CMP.

RSPA determined that the new minimum and maximum CMPs for hazardous material transportation violations apply to violations that occur after September 30, 2003, for which a civil penalty is assessed by RSPA. FRA's changes will be applicable to all violations occurring after June 28, 2004, for which a civil penalty is assessed by FRA.

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. The adjustments required by the Act are ministerial acts over which FRA has no discretion, making public comment unnecessary.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because it is limited to a ministerial act on which the agency has no discretion. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Determination

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although this rule will apply to railroads and shippers who are considered small entities there is no economic impact on any person who complies with the Federal hazardous material transportation laws and the regulations and orders issued under those laws.

C. Federalism

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132,

preparation of a Federalism assessment is not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Compliance with the Unfunded Mandates Reform Act of 1995

The final rule issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year by State, local or Indian Tribal governments, or the private sector, and thus preparation of a statement is not required.

F. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

G. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

List of Subjects in 49 CFR Part 209

Hazardous materials, Penalties.

The Final Rule

■ Therefore, in consideration of the foregoing, chapter II subtitle NB of title 49 of the Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 is revised to read as follows:

Authority. 49 U.S.C. 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 209.103 [Amended]

■ 2. Section 209.103 is amended by removing the numerical amount ''$250'' and adding in its place the numerical amount ''$275'', and by removing the numerical amount ''$27,500'' and adding in its place the numerical amount ''$32,500''.

§ 209.105 [Amended]

■ 3. Section 209.105(c) is amended by removing the numerical amount ''$25,000'' and adding in its place the numerical amount ''$32,500''.

Appendix B to Part 209—[Amended]

■ 4. In appendix B to part 209, the text before the table is amended by removing all references to the numerical amount ''$25,000'' and adding in their place the numerical amount ''$32,500,'' and by removing the reference to the numerical amount ''$250'' and adding in its place the numerical amount ''$275''.

Issued in Washington, DC, on May 18, 2004

Allan Rutter,

Administrator, Federal Railroad Administration.

[FR Doc. 04–11964 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

[Docket No. FRA–2004–17529; Notice No. 1]

RIN 2130–AB61

Inflation Adjustment of the Maximum and Minimum Civil Monetary Penalties for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: To comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, FRA is adjusting the minimum and maximum civil monetary penalties that it will apply when assessing a civil penalty for a violation of railroad safety statutes and regulations under its authority. In particular, FRA is increasing the minimum civil penalty from $500 to $550 and the maximum civil penalty where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury or has actually caused death or injury (''grossly negligent violation'') from $22,000 to $27,000.

DATES: *Effective Date:* This final rule is effective June 28, 2004, except for the amendments to part 222, which are effective December 18, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa L. Porter, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6034).

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) requires that an agency adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum CMPs, within that agency's jurisdiction by October 23, 1996 and adjust those penalty amounts once every four years thereafter to reflect inflation. (Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996 Pub. L. 104–134, 110 Stat. 1321–373, April 26, 1996.) Congress recognized the important role that CMPs play in deterring violations of Federal law and regulations and realized that inflation has diminished the impact of these penalties. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs.

Calculation of the Adjustment

Under the Inflation Act, the inflation adjustment is to be calculated by increasing the maximum CMP, or the range of minimum and maximum CMPs, by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment (here, June 2003) exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set or adjusted (here, June 1992 for the minimum CMP of $500 and June 1998 for maximum CMP of $22,000 for a grossly negligent violation.) The Inflation Act also specifies that amount of the adjustment must be rounded to the nearest multiple of $100 for a penalty between $100 and $1,000, or to the nearest multiple of $5,000 for a penalty between $10,000 and $100,000. The first adjustment may not exceed an increase of ten percent. FRA utilized Bureau of Labor Statistics data to calculate adjusted CMP amounts.

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes and regulations, including the civil penalty provisions at 49 U.S.C. ch. 213. 49 CFR 1.49; 49 U.S.C. ch. 201–213. FRA currently has 27 regulations that contain provisions that reference its authority to impose civil penalties if a person violates any requirement in the pertinent portion of a statute or the Code of Federal Regulations. In this final rule, FRA is amending each of those separate regulatory provisions and the corresponding footnotes in each Schedule of Civil Penalties to raise the minimum CMP to $550 and maximum CMP for a grossly negligent violation to $27,000. In some instances, FRA is amending the corresponding appendices to these regulatory provisions, which outline FRA enforcement policy, as well.

With the exception of the penalties relating to the hours of service laws (49 U.S.C. ch. 211), the maximum CMP for

a violation of the rail safety laws and regulations was established by the Rail Safety Improvement Act of 1988, which set a $10,000 limit for a CMP imposed for any single violation other than a grossly negligent violation, and a $20,000 limit for a grossly negligent violation. In 1998, after applying the adjustment calculation in the Inflation Act, FRA determined that the maximum CMP for any single violation needed to be increased to $11,000 and that the maximum CMP for grossly negligent violations needed to be increased to $22,000. FRA amended each of its regulations by final rule to reflect the increased CMPs. 63 FR 11618.

The Rail Safety Enforcement and Review Act (RSERA) in 1992 increased the range of the minimum and maximum civil penalty from $1,000 to $10,000 and $20,000, respectively, for a violation of the hours of service laws, making these minimum and maximum penalty amounts uniform with those of FRA's other regulatory provisions. By applying the same adjustment calculation using the 1992 CPI, the maximum penalties for violations of the hours of service laws were raised to equal those of the other rail safety laws and regulations: $11,000 and $22,000.

RSERA also increased the minimum CMP for all of the rail safety statutes and regulations from $250 to $500. In 1998, FRA had applied the adjustment calculation in the Inflation Act to the minimum CMP and had determined that it would not need to be increased. Now, applying the adjustment calculation using the June 2003 CPI, FRA has determined that the minimum CMP should be increased from $500 to $550, as the next calculations show.

The June 2003 CPI of 550.4 divided by the June 1992 CPI of 419.9 equals a 1.31 inflation factor; $500 times 1.31 equals $655, or an increase of $155, which is rounded to $200. The required ten percent cap is applied to that increase. Therefore, the legal increase is $50.

Because this is the first time that the minimum CMP has been adjusted under the Inflation Act, the ten-percent cap on the increase was applied. This final rule adjusts the minimum CMP for all of the rail safety statutes and regulations.

As required by the Inflation Act, FRA recently reevaluated the ordinary maximum CMP and the maximum CMP for grossly negligent violations using the June 2003 CPI, and determined that the maximum CMP for grossly negligent violations should be increased to $27,000, but that the maximum CMP for ordinary violations should remain at $11,000, as the next calculations show.

The June 2003 CPI of 550.4 divided by the June 1998 CPI of 488.2 equals a 1.13 inflation factor; $11,000 times 1.13 equals $12,430, or an increase of $1,430, which is rounded down to $0; $22,000 times 1.13 equals $24,860, or an increase of $2,860, which is rounded up to $5,000.

Because this is the second time that the maximum CMP for grossly negligent violations has been adjusted under the Act, the ten-percent cap on the increase does not apply.

These new FRA maximum penalties will apply to violations that occur on or after June 28, 2004.

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. The adjustments required by the Act are ministerial acts over which FRA has no discretion, making public comment unnecessary. FRA is issuing these amendments as a final rule applicable to all future cases under its authority.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because it is limited to a ministerial act on which the agency has no discretion. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Determination

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although this rule will apply to railroads and others who are considered small entities, there is no economic impact on any person who complies with the Federal railroad safety laws and the regulations and orders issued under those laws.

C. Federalism

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism assessment is not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Compliance with the Unfunded Mandates Reform Act of 1995

The final rule issued today will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year by State, local, or Indian Tribal governments, or the private sector, and thus preparation of a statement is not required.

F. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

G. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

List of Subjects in 49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

Railroad safety, Penalties.

The Final Rule

■ In consideration of the foregoing, parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244, of subtitle B, chapter II of title 49 of the Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 209.409 [Amended]

■ 2. Section 209.409 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 209—[Amended]

■ 3. Appendix A to part 209 is amended by:

■ a. Removing the numerical amount ''$500'' in the third paragraph below the heading ''Penalty Schedules; Assessment of Maximum Penalties,'' and replacing it with the numerical amount ''$550''; and

■ b. Removing both references to the numerical amount ''$22,000'' in the sixth

paragraph below the heading ''Penalty Schedules; Assessment of Maximum Penalties,'' and replacing them with the numerical amount ''$27,000''.

PART 213—[AMENDED]

■ 4. The authority citation for part 213 is revised to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§ 213.15 [Amended]

■ 5. Paragraph (a) of § 213.15 is amended by:
■ a. Removing the numerical amount ''$500''; and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix B to Part 213—[Amended]

■ 6. Footnote 1 to appendix B of part 213 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 214—[AMENDED]

■ 7. The authority citation for part 214 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 214.5 [Amended]

■ 8. Section 214.5 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 214—Amended]

■ 9. Footnote 1 to appendix A of part 214 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 215—[AMENDED]

■ 10. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 215.7 [Amended]

■ 11. Section 215.7 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix B to Part 215—[Amended]

■ 12. Footnote 1 to appendix B of part 215 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 216—[AMENDED]

■ 13. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 216.7 [Amended]

■ 14. Section 216.7 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 217—[AMENDED]

■ 15. The authority citation for part 217 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 217.5 [Amended]

■ 16. Section 217.5 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 217—[Amended]

■ 17. Footnote 1 to appendix A of part 217 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 218—[AMENDED]

■ 18. The authority citation for part 218 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 218.9 [Amended]

■ 19. Section 218.9 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 218—[Amended]

■ 20. Footnote 1 to appendix A of part 218 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 219—[AMENDED]

■ 21. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§ 219.9 [Amended]

■ 22. Section 219.9(a) is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 219—[Amended]

■ 23. Footnote 1 to appendix A of part 219 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 220—[AMENDED]

■ 24. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 220.7 [Amended]

■ 25. Section 220.7 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix C to Part 220—[Amended]

■ 26. Footnote 1 to appendix C of part 220 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 221—[AMENDED]

■ 27. The authority citation for part 221 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 221.7 [Amended]

■ 28. Section 221.7 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 221—[Amended]

■ 29. Footnote 1 to appendix A of part 221 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 222—[AMENDED]

■ 30. The authority citation for part 222 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 222.11 [Amended]

■ 31. Section 222.11 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix G to Part 222—[Amended]

■ 32. Footnote 1 to appendix G of part 222 is amended by: removing the numerical amount ''20,000'' and adding in its place the numerical amount ''27,000''.

PART 223—[AMENDED]

■ 33. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 223.7 [Amended]

■ 34. Section 223.7 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix B to Part 223—[Amended]

■ 35. Footnote 1 to appendix B of part 223 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 225—[AMENDED]

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

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 225.29 [Amended]

■ 37. Section 225.29 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 225—[Amended]

■ 38. Footnote 1 to appendix A of part 225 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 228—[AMENDED]

■ 39. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21108; 28 U.S.C. 2461, note and 49 CFR 1.49.

§ 228.21 [Amended]

■ 40. Section 228.21 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix B to Part 228—[Amended]

■ 41. In appendix A to part 228, the ninth paragraph below the heading ''General Provisions,'' which is entitled ''Penalty'' is amended by adding the following two sentences at the end of the paragraph:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

Penalty. * * * According to the same law, in 2004, the minimum penalty of $500 was raised to $550, and the maximum penalty for a grossly negligent violation or a pattern of repeated violations that has caused an imminent hazard of death or injury to individuals or has caused death or injury, was increased from $22,000 to $27,000. The $11,000 maximum penalty was not adjusted.

* * * * *

■ 42. Footnote 1 to appendix B of part 228 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 229—[AMENDED]

■ 43. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49 (c), (m).

§ 229.7 [Amended]

■ 44. Paragraph (b) of § 229.7 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix B to Part 229—[Amended]

■ 45. Footnote 1 to appendix B of part 229 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 230—[AMENDED]

■ 46. The authority citation for part 230 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 230.4 [Amended]

■ 47. Paragraph (a) of § 230.4 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 231—[AMENDED]

■ 48. The authority citation for part 231 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 231.0 [Amended]

■ 49. Paragraph (f) of § 231.0 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 231—[Amended]

■ 50. Footnote 1 to appendix A of part 231 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 232—[AMENDED]

■ 51. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 232.11 [Amended]

■ 52. Paragraph (a) of § 232.11 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 232—[Amended]

■ 53. Footnote 1 to appendix A of part 232 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 233—[AMENDED]

■ 54. The authority citation for Part 233 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 231.11 [Amended]

■ 55. Section 233.11 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 223—[Amended]

■ 56. Footnote 1 to appendix A of part 233 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 234—[AMENDED]

■ 57. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 234.6 [Amended]

■ 58. Paragraph (a) of § 234.6 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 234—[Amended]

■ 59. Footnote 1 to appendix A of part 234 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 235—[AMENDED]

■ 60. The authority citation for part 235 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 235.9 [Amended]

■ 61. Section 235.9 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 235—[Amended]

■ 62. Footnote 1 to appendix A of part 235 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$22,000''.

PART 236—[AMENDED]

■ 63. The authority citation for part 236 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note and 49 CFR 1.49.

§ 236.0 [Amended]

■ 64. Paragraph (f) of § 236.0 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 236—[Amended]

■ 65. Footnote 1 to appendix A of part 236 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 238—[AMENDED]

■ 66. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 238.11 [Amended]

■ 67. Section 238.11(a) is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 238—[Amended]

■ 68. Footnote 1 to appendix A to part 238 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 239—[AMENDED]

■ 69. The authority citation for part 239 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

§ 239.11 [Amended]

■ 70. Section 239.11 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 239—[Amended]

■ 71. Footnote 1 to appendix A to part 239 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 240—[AMENDED]

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

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 240.11 [Amended]

■ 73. Paragraph (a) of § 240.11 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 240—[Amended]

■ 74. Footnote 1 to appendix A of part 240 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 241—[AMENDED]

■ 75. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 241.15 [Amended]

■ 76. Paragraph (a) of § 241.15 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and
■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Appendix A to Part 241—[Amended]

■ 77. Footnote 1 to appendix A of part 241 is amended by removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

PART 244—[AMENDED]

■ 78. The authority citation for part 244 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 244.5 [Amended]

■ 79. Paragraph (a) of § 244.5 is amended by:
■ a. Removing the numerical amount ''$500'' and adding in its place the numerical amount ''$550''; and

■ b. Removing the numerical amount ''$22,000'' and adding in its place the numerical amount ''$27,000''.

Issued in Washington, DC, on May 18, 2004.

Allan Rutter,

Administrator, Federal Railroad Administration.

[FR Doc. 04–11965 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 69, No. 104
Friday, May 28, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV04–916/917–03 PR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches; and Request for Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites comments on proposed revisions to the reporting requirements in the rules and regulations of the marketing orders (orders) for fresh nectarines and peaches grown in California. It also announces the Agricultural Marketing Service's (AMS's) intention to request approval by the Office of Management and Budget (OMB) of a new information collection issued under the orders. The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). Under the orders, authority is provided for the committees to require handlers to file reports on their shipments of fresh nectarines and peaches. This proposed rule would revise the current shipment report to require handlers to include new information on the growers whose fruit the handler handles annually. The new information would enhance committee communications and facilitate the development of a simplified ballot for referendums.

DATES: Comments must be received by July 27, 2004. Pursuant to the Paperwork Reduction Act, any comments on the new information collection must be received by July 27, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; fax: (202) 720–8938; or e-mail: *moab.docketclerk@usda.gov* or *www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; fax: (202) 205–8938; or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this proposed rule in conformance with Executive Order 12866.

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

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

This proposal invites comments on revisions to the orders' rules and regulations pertaining to reporting requirements under the orders. This rule would revise the current handler shipment report for fresh nectarines and peaches by requiring handlers to report the names, addresses, telephone numbers, and any available facsimile numbers and e-mail addresses for the growers who produced the nectarines and/or peaches the handlers shipped during the season. Handlers would also be required to report the nectarine and/or peach volumes of each of their growers annually. This proposal was unanimously recommended by the committees at their meetings on February 25, 2004.

In §§ 916.60 and 917.50 of the orders, authority is provided for the committees to require handlers to file reports with the committees. The information authorized includes, but is not limited to: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the quantities shipped, showing separately the variety, grade,

and size of the fruit; (6) the destination; and (7) the identification of the inspection certificate or waiver pursuant to which the fruit was handled.

The nectarine order also requires that handlers supply the committee with other information, pursuant to paragraph (b) of § 916.60, which states, in part: ''Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.''

The requirement under the peach order is similar in paragraph (b) of § 917.50, which states, in part, ''Upon request of any committee, made with the approval of the Secretary, each handler shall furnish to the Manager of the Control Committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.''

Under paragraph (b) of §§ 916.160 and 917.178 of the orders' rules and regulations, the requirement for a shipment report is specified, and information required on the report and a due date for submission of the report are established, as well. With this proposed change, paragraph (b) in §§ 916.160 and 917.178 would be amended to add the requirement that handlers begin reporting each of their grower's annual nectarine and/or peach volumes by including the grower's name, address, telephone number, facsimile number (if applicable), e-mail address (if applicable), and total volumes in 25-pound containers or container equivalent units.

At their February 25, 2004, meetings, the Nectarine Administrative Committee and the Peach Commodity Committee discussed the merits of revising the current shipment reports. The committees considered including information about varieties and styles of pack for each handler's growers. After some discussion about the proposed new information, it was determined that varietal and pack style information was unnecessary as long as each grower's total volume was required. The committees, then, unanimously recommended amending the existing shipment reports to include the name, address, telephone number, facsimile number (if applicable), e-mail address (if applicable), and volume of nectarines and/or peaches each handler handled annually on behalf of each of their growers.

The committees believe that having such information would allow them to communicate more effectively and efficiently with growers. Material distributed would include information such as: Production and post-harvest research; proposed and existing regulatory requirements under the marketing orders, and requirements of local, county, State, or other Federal agencies; surveys about research needs; crop estimates; seasonal packout information; annual reports; meeting notices; and meeting minutes.

The grower information would provide the committees with more complete information on the growers that constitute their respective industries. More importantly, the committees would have information on each grower's volume of fruit, which would help the committees make more accurate crop estimates and compute seasonal packout totals.

According to the committees, such information would permit USDA to simplify continuance referendum ballots that are used to determine whether growers support the continuation of the marketing orders. These referenda are required under the orders every four years. USDA would consider termination of the marketing orders if less than two-thirds of those voting and less than two-thirds of the volume represented in the referendum favor continuance.

Currently, the ballot requires growers to list the total volume of nectarines and/or peaches that he or she produced during a representative period (usually the crop year preceding the referendum) by container type. This information is necessary to ensure that each grower's vote is properly weighted by the volume of fruit he or she produced. However, growers have complained that the ballot is confusing and difficult to complete partly because of the requirement for each grower to provide volume information. The committees believe that elimination of this requirement from the ballot will not only simplify the ballot, but also encourage more growers to vote.

USDA would no longer require grower volume information on the ballot; the committee staff, based upon information from the revised shipment report, would provide that information to USDA. However, in the event that a handler fails to file a shipment report, as part of the ballot process, his or her growers would be required to provide the volume of nectarines and/or peaches that were packed during the representative period.

Producer ballots on order amendments would be changed similarly by USDA to foster more producer participation.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 250 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms, which include handlers, as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $750,000.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. In the 2003 season, the average handler price received was $7.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 714,286 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2003 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the packers within the industry.

The committees' staff also has estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. In the 2003 season, the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2003 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of $4.00 per container or container

equivalent, and a combined packout of nectarines and peaches of 44,202,600 containers, the value of the 2003 packout level is estimated to be $176,810,400. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimated average revenue per producer of approximately $98,228 from the sales of nectarines and peaches.

This proposal would revise §§ 916.160 and 917.178 of the orders' administrative rules and regulations to require handlers to provide information annually about growers who grew the fruit they handled. The handlers would be required to list each grower's name, address, telephone number, facsimile number (if applicable), and e-mail address (if applicable). Additionally, the handlers would be required to list the volume of nectarines and/or peaches handled (in containers or container equivalents) for each of their growers.

Information obtained from such reports is expected to improve communications within the industry and facilitate the development of a simplified continuance referendum ballot. Other ballots used under the marketing orders also would be simplified.

Requiring handlers to file the revised report on an annual basis would impose an additional reporting burden. When evaluating the new response time to include the additional information on the currently approved form, each committee found that the previous one-hour response time had been overestimated. Each committee believes the average time needed to prepare its current form is actually one-half hour. It is estimated that the proposed additional new information collection would add another one-half hour to complete. Thus, the response time to complete each revised form would be one hour, which is already approved by OMB under OMB No. 0581–0189. Upon OMB approval of the new information collection package, both revised forms would be merged into 0581–0189.

An alternative to this proposed action would be to continue operations without requiring grower information. However, having such grower information would enhance communication in the industry and may promote industry cohesion. Committee members agreed that the value of having grower information outweighed the burden on handlers of filing such reports by allowing the committees to more effectively target information and communications to growers. In addition, when e-mail addresses are provided, much of the information that the committees now mail to the industry could be sent electronically, thereby reducing committee administrative costs.

During the deliberations, some committee members indicated their concern that confidentiality of the required information would not be maintained. However, such information is available only to committee staff members, who are required by §§ 916.60(d) and 917.50(d) to maintain confidentiality of all reports and records submitted by handlers.

Further, a confidentiality statement would be provided on each form. Other concerns about confidentiality were addressed by not requiring handlers to report the volume handled by variety and style of pack. By limiting the quantity reported by the handler to the total volume handled for each of the handler's growers, members felt that confidentiality was better assured.

The committee meetings on February 25 were widely publicized throughout the tree fruit industry and all interested persons were invited to express their views and participate in committee deliberations. Like all committee meetings, the February 25, 2004, meetings were public meetings, and all entities, large and small, were able to express their views on this issue. Meeting notices were provided to committee members and other interested persons both by mail and through the committee Web site. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements that are contained in this rule are being submitted to OMB for approval. More specific information on this collection is discussed below.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sector agencies.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces AMS' intention to request OMB approval of a new information collection as proposed in this rule. The new information collection would not become effective until OMB approves of the additional information collection.

The new information collection would revise both the peach and nectarine shipment—grower data reports currently approved under OMB No. 0581–0189.

Title: Nectarines and Peaches Grown in California, Marketing Orders 916 and 917.

OMB Number: 0581–New.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New Collection.

The orders and their rules and regulations require handlers to submit certain information to the committees, the agencies responsible for local administration of the orders. Much of this information is compiled in the aggregate and provided to the industry to assist in marketing decisions. The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing orders for California nectarines and peaches.

The committees have developed forms as a convenience to persons who are required to file information with the committees that is needed to carry out the purposes of the Act and the orders. These forms require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders, and the rules and regulations issued under the orders.

On February 25, 2004, the committees voted unanimously to change each of its current shipment reports to include specific information about the growers who grew the nectarines or peaches they handled. Currently, nectarine handlers and peach handlers report their total nectarine or peach shipments by variety, style of pack, and size by November 15 of each year. The revised nectarine and peach reports would require handlers to include information about each grower who grew the nectarines or peaches the handler handled. Such information would include the name, address, telephone number, any facsimile number or e-mail addresses for each grower, as well as the total volume of nectarines or peaches grown by the producer and handled by the handler.

Only authorized employees of the committees and authorized representatives of USDA, including AMS, Fruit and Vegetable Program regional and headquarters staff, as primary and secondary users, respectively, would use the information collected.

This proposed collection consists of a new requirement for handlers to provide

information about growers who grew the nectarines or peaches the handler handled. With grower information from handlers, the committee would be able to communicate with growers of record and provide them with information on: Production and post-harvest research; proposed and existing regulatory requirements under the marketing orders, and requirements of local, county, State, or other Federal agencies; surveys about research needs; crop estimates; seasonal pack-outs; meeting notices; and meeting minutes. This information also would enable USDA to simplify the referendum ballot used to determine grower support for the programs by removing the requirement that each grower list his or her total volume of nectarines or peaches by style of pack and weight.

When evaluating the new per response time to include the additional information on the currently approved handler shipment report, each committee found that the previous one-hour response time had been overestimated. Each committee believes the average time needed to prepare its current form is actually one-half hour. It is estimated that the proposed additional new information collection would add another one-half hour to complete. Thus, the response time to complete each revised form would be one hour. Upon OMB approval of the new information collection, both revised forms would be merged into 0581–0189. The burden for the nectarine shipment report would be:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response. This represents an increase of one-half hour over the re-evaluated per response of one-half hour for the current information collected, and equals the same 1 hour burden as is currently approved.

Respondents: Handlers of fresh nectarines produced in California.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

The burden for the peach shipment report would be:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response. This represents an increase of one-half hour over the re-evaluated per response of one-half hour for the current information collected, and equals the same 1 hour burden as is currently approved.

Respondents: Handlers of fresh peaches produced in California.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the California nectarine and peach marketing order programs and USDA's oversight of those programs; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–New and the California Nectarine Marketing Order No. 916 or the California Peach Marketing Order No. 917, and be sent to the USDA in care of the docket clerk at the address referenced above.

All responses to this notice would be summarized and included in the request for OMB approval. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the same address or at *http://www.ams.usda.gov/fv/moab.html.* Once the Web site page is opened, click on ''nectarines'' or ''peaches,'' and find the docket number of this proposed rule. Any comments received regarding this rule will be found in the ''Comments Received'' link. If no comments were received in response to a rule, there will be no ''Comments Received'' link.

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

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. In § 916.160, paragraph (b) is revised to read as follows:

§ 916.160 Reporting procedure.

* * * * *

(b) *Recapitulation of shipments.* Each shipper of nectarines shall furnish to the manager of the Nectarine Administrative Committee not later than November 15 of each year a recapitulation of shipments of each variety shipped during the just-completed season. The recapitulation shall show: The name of the shipper, the shipping point, the district of origin, the variety, and the number of packages, by size, for each container type. Each shipper also shall furnish to the manager not later than November 15, a recapitulation of shipments by that shipper's growers showing: Each grower's name, address, telephone number, facsimile number (if applicable), and e-mail address (if applicable), and the total number of packages shipped by container or container equivalents for each grower.

* * * * *

PART 917—PEACHES GROWN IN CALIFORNIA

3. In § 917.178, paragraph (b) is revised to read as follows:

§ 917.178 Peaches.

* * * * *

(b) *Recapitulation of shipments.* Each shipper of peaches shall furnish to the manager of the Control Committee not later than November 15 of each year a recapitulation of shipments of each variety shipped during the just-completed season. The recapitulation shall show: The name of the shipper, the shipping point, the district of origin, the variety, and the number of packages, by size, for each container type. Each shipper also shall furnish to the manager not later than November 15, a recapitulation of shipments by that shipper's growers showing: Each grower's name, address, telephone number, facsimile number (if

applicable), and e-mail address (if applicable), and the total number of packages shipped by container or container equivalents for each grower.

* * * * *

Dated: May 25, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–12137 Filed 5–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2 and 3

[Docket No. 97–001–5]

RIN 0579–AB39

Animal Welfare; Policy on Training and Handling of Potentially Dangerous Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Draft policy statement; withdrawal.

SUMMARY: On February 18, 2000, we published a draft policy statement regarding the training and handling of potentially dangerous animals in the **Federal Register** in order to seek public comment on the policy statement prior to its implementation. The draft policy statement was developed to provide guidance to exhibitors and other regulated entities on how to comply with the regulations regarding training and handling of potentially dangerous animals (*e.g.*, lions, tigers, bears, and elephants). This is to notify the public that we will not be publishing or implementing a final policy statement on these issues.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate regulations and standards governing the humane handling, care, treatment, and transportation of animals, as defined in the AWA, by dealers, exhibitors, and other regulated persons. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3.

The regulations governing the handling of all animals are found in 9 CFR part 2, § 2.131. Section 2.131, paragraph (a) requires that handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm or unnecessary discomfort, and prohibits the use of physical abuse or deprivation of food or water to train, work or otherwise handle animals except that short-term withholding of food or water by exhibitors is allowed as long as each of the animals affected receives its full dietary and nutrition requirements each day.

Section 2.131, paragraph (b)(1) requires that during public exhibition, any animal must be handled so there is minimal risk of harm to the animal and the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of the animals and the public. Paragraph (b)(2) requires that performing animals receive a rest period between performances. Paragraph (b)(3) prohibits exposing young or immature animals to rough or excessive public handling, or exhibiting them for periods of time that would be detrimental to their health or well-being. Paragraph (b)(4) prohibits the use of drugs to facilitate, allow, or provide for public handling of animals.

Section 2.131, paragraph (c) requires that: (1) Animals be exhibited only for periods of time and under conditions consistent with their good health and well-being, (2) a responsible, knowledgeable and readily identifiable employee or attendant be present at all times during public contact, (3) during public exhibition, dangerous animals be under the direct control and supervision of a knowledgeable and experienced animal handler, and (4) if public feeding of animals is allowed, the food be provided by the animal facility and appropriate for the animal and its needs and diet.

Section 2.131, paragraph (d) prohibits subjecting animals to any combination of temperature, humidity and time that is detrimental to their health or well-being.

Regulations governing handling and personnel qualifications for research facilities are found at 9 CFR part 2, §§ 2.38(f), 2.32. Handling and employee standards for specific animals are found at 9 CFR part 3, §§ 3.19, 3.12 (dogs and cats), §§ 3.41, 3.32 (hamsters and guinea pigs), §§ 3.66, 3.57 (rabbits), §§ 3.92, 3.85 (nonhuman primates), §§ 3.118, 3.108 (marine mammals), and §§ 3.142, 3.132 (animals other than dogs, cats, hamsters, guinea pigs, rabbits, nonhuman primates, and marine mammals).

On February 18, 2000, we published a draft policy statement in the **Federal Register** (65 FR 8318–8321, Docket No. 97–001–4) in order to seek public comment on the policy statement prior to its implementation. The draft policy statement was developed to provide guidance to exhibitors and other regulated persons on how to comply with the regulations regarding training and handling of potentially dangerous animals.

We solicited comments concerning our draft policy statement for 60 days ending on April 18, 2000. We received 204 comments by that date. They were from licensees, professional organizations, animal welfare organizations, zoos, academicians, consultants, and private citizens.

We have determined that any clarification of the regulations should be accomplished through rulemaking and we are now providing notice that we will not be publishing or implementing a final policy statement on these issues. Should we propose to amend the regulations and standards, we will initiate rulemaking and provide notice and opportunity for public comment.

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

Jessica Mahalingappa,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–12135 Filed 5–27–04; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 717 and 748

Fair Credit Reporting—Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NCUA Board is requesting comment on a proposal to implement section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) by amending the fair credit reporting and security program regulations and NCUA's Guidelines for Safeguarding Member Information. The proposal would require Federal credit

unions (FCUs) to develop, implement, and maintain appropriate measures to properly dispose of consumer information derived from consumer reports. FCUs are expected to implement these measures consistent with the provisions in NCUA's Guidelines for Safeguarding Member Information.

DATES: Comments must be received by July 12, 2004.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- E-mail: *regcomments@ncua.gov*. Include ''FACT Act Disposal Rule'' in the subject line of the message.
- Fax: Becky Baker, Secretary of the Board, (703) 518–6319, use the subject line described above for e-mail.
- Mail: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- Hand Delivery/Courier: Guard station in lobby of 1775 Duke Street, Alexandria, Virginia, on business days between 8 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name for this rulemaking. Commenters are encouraged to use the title ''FACT Act Disposal Rule'' to facilitate the organization of comments. Whatever method you choose, please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 216 of the FACT Act adds a new section 628 to the Fair Credit Reporting Act (FCRA) that, in general, is designed to protect a consumer against the risks associated with unauthorized access to information about the consumer contained in a consumer report, such as fraud and identity theft. 15 U.S.C. 1681w. Section 216 of the FACT Act requires NCUA to adopt a rule requiring any FCU ''that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.'' Public Law 108–159, 117 Stat. 1985–86. The FACT Act mandates that the rule be consistent with the requirements issued pursuant to the Gramm-Leach-Bliley Act (GLBA) (Pub. L. 106–102), as well as other provisions of Federal law.

NCUA proposes amendments to the fair credit reporting and security program rules and its Guidelines for Safeguarding Member Information, to require FCUs to implement controls designed to ensure the proper disposal of consumer information within the meaning of section 216. 12 CFR parts 717 and 748. In accordance with section 216, NCUA has consulted with the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), Federal Trade Commission (FTC), and Securities and Exchange Commission (collectively, the Agencies) to ensure that, to the extent possible, the rules proposed by the respective agencies to implement section 216 are consistent and comparable. NCUA's proposed regulation and the preamble are substantively similar to a joint notice of proposed rulemaking that NCUA anticipates will be issued by the federal banking agencies (FRB, OCC, FDIC and OTS) shortly.

II. Background

In 2001, NCUA amended the security program rule to establish standards for federally insured credit unions (FICUs) relating to administrative, technical, and physical safeguards to protect the security and confidentiality of member records and information, pursuant to section 501 of GLBA. 15 U.S.C. 6805(b). NCUA worked with the Agencies and State insurance authorities to develop appropriate standards. 66 FR 8152 (Jan. 30, 2001). The Federal banking agencies issued their standards as guidelines under section 39 of the Federal Deposit Insurance Act. 12 U.S.C. 1831p.[1] NCUA determined it could best meet the congressional directive to prescribe standards by amending the rule governing security programs and by providing guidance in an appendix to the rule. 12 CFR part 748, Appendix A; 66 FR 8152 (Jan. 30, 2001).

Section 748.0 requires an FICU to develop a security program that implements safeguards designed to: (1) Ensure the security and confidentiality of member records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to a member. 12 CFR 748.0(b)(2).

Appendix A to part 748 sets forth NCUA's Guidelines for Safeguarding Member Information (Guidelines), which are substantially identical to the guidelines issued by the Agencies. 66 FR 8152 (Jan. 30, 2001). The Guidelines ''are intended to outline industry best practices and assist credit unions to develop meaningful and effective security programs to ensure their compliance with the safeguards contained in the regulation.'' *Id.*

The Guidelines direct FICUs to assess the risks to their member information and member information systems and, in turn, implement appropriate security measures to control those risks. 12 CFR part 748, Appendix A. For example, under the risk-assessment framework, FICUs should evaluate whether the controls the FICU has developed sufficiently protect its member information from unauthorized access, misuse, or alteration when the FICU disposes of the information. ''[A] credit union's responsibility to safeguard member information continues through the disposal process.'' 66 FR 8152, 8155.

III. Proper Disposal of Consumer Information and Member Information

Section 216 of the FACT Act requires NCUA to issue final regulations for entities under its enforcement authority under section 621 of the FCRA. Unlike the current provisions in the security program rule, which apply to all FICUs, the requirements in the proposed rule would apply solely to FCUs. *See* 15 U.S.C. 1681s(b)(3). Federally insured State-chartered credit unions are subject to the enforcement jurisdiction of the FTC for purposes of the FCRA. *See* 15 U.S.C. 1681s(a). State charters, therefore, should refer to the proposed rule issued by the FTC regarding the proper disposal of consumer information under section 216. 69 FR 21388 (Apr. 20, 2004).

The NCUA Board proposes to implement section 216 by adding § 717.83 to NCUA's fair credit reporting rule[2] that will require FCUs to develop and maintain, as part of their information security programs, appropriate controls designed to ensure that they properly dispose of consumer

[1] 12 CFR parts 30, app. B; 208, app. D–2 and 225, app. F; 364, app. B; 570, app. B. *See* 66 FR 8616 Feb. 1, 2001.

[2] On April 8, 2004, NCUA proposed a new part 717, implementing section 411 of the FACT Act. *See* 69 FR 23380 (Apr. 28, 2004).

information. The Board proposes to place a cross-reference in the security program rule, § 748.0, that directs FCUs to § 717.83 to ensure that controls for the disposal of consumer information are included in FCU information security programs. Lastly, the Board proposes to amend the Guidelines to address the disposal of consumer information. FCUs are expected to dispose of consumer information in a manner consistent with the disposal of member information in the Guidelines.

Section 717.83—Disposal of Consumer Information

NCUA proposes to incorporate the new disposal requirement in § 717.83 by defining ''consumer information'' and requiring FCUs to properly dispose of consumer information in a manner consistent with the Guidelines. Proposed § 717.83 also incorporates a rule of construction that closely tracks the terms of section 628(b) of the FCRA, as added by section 216 of the FACT Act. It states that the section does not impose any requirements to maintain or destroy consumer records beyond those imposed by any other law. The proposed rule also would not affect any requirement to maintain or destroy consumer records imposed under any other provision of law.

Consumer Information

Section 717.83(d)(1) would define ''consumer information'' to mean ''any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose.'' ''Consumer information'' would also be defined to mean ''a compilation of such records.''

The scope of information covered by the terms ''consumer information,'' and ''member information'' as defined under the Guidelines, will sometimes overlap, but will not always coincide. NCUA notes that the proposed definition of ''consumer information'' is drawn from the term ''consumer'' in section 603(c) of the FCRA, which defines a ''consumer'' as an individual. 15 U.S.C. 1681a(c). By contrast, ''member information'' under the Guidelines, only covers nonpublic personal information about a ''member,'' as defined in § 716.3(n), namely, an individual who obtains a financial product or service to be used primarily for personal, family, or household purposes and who has a continuing relationship with the FCU.

The relationship between consumer information and member information can be illustrated through the following examples. Payment history information from a consumer report about an individual, who is an FCU's member, will be both consumer information because it comes from a consumer report and member information because it is nonpublic personal information about a member. In some circumstances, member information will be broader than consumer information. For instance, information that an FCU maintains about its member's transactions with the FCU would be only member information because it does not come from a consumer report. In other circumstances, consumer information will be broader than member information. Consumer information would include information from a consumer report that an FCU obtains about an individual who guarantees a loan for a business entity or who has applied for employment with the FCU. In these instances, the consumer reports would not be member information because the information would not be about a ''member'' within the meaning of the Guidelines but would be consumer information.

NCUA proposes to define ''consumer information'' as ''any record about an individual * * * that is a consumer report or is derived from a consumer report.'' Under this definition, information that may be ''derived from consumer reports'' but does not identify a particular consumer would not be covered under the proposed rule. For example, an FCU must implement measures to properly dispose of consumer information that identifies a consumer, such as the consumer's name and the credit score derived from a consumer report. This requirement, however, would not apply to the mean credit score that is derived from a group of consumer reports. NCUA believes that limiting ''consumer information'' to information that identifies a consumer is consistent with the current law relating to the scope of the term ''consumer report'' under the FCRA and the purposes of section 216 of the FACT Act.

NCUA requests suggestions for clarifying the scope of the individuals and information covered under the term ''consumer information.'' Among other issues, NCUA believes that the phrase ''derived from consumer reports'' covers all of the information about a consumer taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information. Consequently, an FCU that possesses any of this information must properly dispose of the information.

For example, any record about a consumer derived from a consumer report, such as the consumer's name and credit score, that is shared with an affiliate credit union service organization must be disposed of properly by each affiliate that possesses that information. Similarly, a consumer report that is shared among affiliates after the consumer has been given a notice and has elected not to opt out of that sharing, and therefore is no longer a ''consumer report'' under the FCRA,[3] would still be ''consumer information'' under this proposal. Accordingly, an FCU that receives consumer information under these circumstances must properly dispose of the information. NCUA seeks comment on whether the definition of ''consumer information'' should be revised to further clarify this interpretation of the statutory phrase ''derived from consumer reports,'' such as by example or otherwise.

NCUA notes that the proposed definition of ''consumer information'' includes the qualification ''for a business purpose'' in section 216 of the FACT Act. NCUA believes that the phrase ''for a business purpose'' encompasses any commercial purpose for which an FCU might maintain or possess consumer information and requests comment on that interpretation.

Compliance

NCUA proposes to require each FCU to implement the appropriate measures to properly dispose of consumer information within three months after the final rule is published in the **Federal Register**. NCUA believes that any changes to an FCU's existing information security program to properly dispose of consumer information likely will be minimal. Accordingly, NCUA considers a three-month period sufficient to enable FCUs to adjust their systems and controls.

Section 748.0—Security Program

NCUA proposes to add paragraph (c) to § 748.0 to include a cross-reference to the section 216 requirement in § 717.83, for ease of reference when FCUs adopt or modify their security programs.

Guidelines for Safeguarding Member Information

The Board proposes to amend the Guidelines to specifically address the disposal of consumer information by: (1) Defining ''consumer information'' as defined in § 717.83; (2) adding an

[3] 15 U.S.C. 1681a(d)(2)(A)(iii).

objective regarding the proper disposal of consumer information; and (3) providing that an FCU should implement appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of member information.

New Objective for an Information Security Program

NCUA proposes to add a new objective regarding the proper disposal of consumer information in paragraph II.B. of the Guidelines. The new objective provides that an FCU should design its information security program to ''[e]nsure the proper disposal of consumer information in a manner consistent with the disposal of member information.''

By including this additional objective in paragraph II.B., NCUA expects FCUs to review the measures taken by their service providers to properly dispose of consumer information. FCUs should require service providers to develop appropriate measures for the proper disposal of consumer information and, where warranted, monitor service providers to confirm that they have satisfied their contractual obligations. Paragraph III.D.2. of the Guidelines currently provide that a credit union should require ''[i]ts service providers by contract to implement appropriate measures designed to meet the objectives of these guidelines.''

NCUA also proposes to amend paragraph III.G.2. to allow an FCU a reasonable period of time, after the final regulations are issued, to amend its contracts with its service providers to incorporate the necessary requirements in connection with the proper disposal of consumer information. NCUA proposes that FCUs modify the contracts that will be affected by the newly-implemented requirements within one year after publication of the final regulations. NCUA seeks comment on whether a one-year period for modification of agreements with service providers is appropriate.

New Provision To Implement Measures To Properly Dispose of Consumer Information

NCUA proposes to amend paragraph III.C. of the Guidelines by adding a new provision stating that an FCU, as part of its information security program, should develop, implement, and maintain appropriate measures to properly dispose of consumer information. This new provision also provides that FCUs should implement these measures ''in a manner consistent with the disposal of member information'' and ''in accordance with the provisions in paragraph III'' of the Guidelines.

Paragraph III of the Guidelines presently states that an FCU should undertake measures to design, implement, and maintain its information security program to protect member information and member information systems, including the methods it uses to dispose of member information. Under the proposal, an FCU is expected to adopt a comparable set of procedures and controls to properly dispose of consumer information. For example, an FCU should broaden the scope of its risk assessment to include an assessment of the reasonably foreseeable internal and external threats associated with the methods it uses to dispose of consumer information, and adjust its risk assessment in light of the relevant changes relating to such threats. By expressly adding this new provision in § 748.0(c) and to the Guidelines, NCUA expects FCUs to integrate into their information security programs the risk-based measures in paragraph III of the Guidelines for the disposal of consumer information.

NCUA believes that it is not necessary to propose a prescriptive rule describing proper methods of disposal. Nonetheless, consistent with interagency guidance previously issued through the Federal Financial Institutions Examination Council (FFIEC),[4] NCUA expects FCUs to have appropriate disposal procedures for records maintained in paper-based or electronic form. NCUA notes that an FCU's information security program should ensure that paper records containing either member or consumer information should be rendered unreadable as indicated by the FCU's risk assessment, such as by shredding or any other means. FCUs also should recognize that computer-based records present unique disposal problems. Residual data frequently remains on media after erasure. Since that data can be recovered, FCUs should apply additional disposal techniques to sensitive electronic data.[5]

NCUA seeks comment on whether the proposed amendment to paragraph III.C. of the Guidelines sufficiently explains the nature and scope of the obligations on FCUs to modify their information security programs, including measures that should be implemented and adjusted, as appropriate, to properly dispose of consumer information.

NCUA also requests comment on whether the use in the proposal of the statutory phrase ''proper disposal'' is sufficiently clear. Would a more specific standard provide better guidance to FCUs or better protect consumers, or both?

The proposed changes to the Guidelines are intended to provide guidance to FCUs for compliance with proposed § 717.83. As noted above, the requirements of this proposed disposal rule only apply to FCUs, while federally insured State-chartered credit unions are subject to the jurisdiction of the FTC on this matter. The Board believes, however, that federally insured state charters may find this guidance helpful in adopting meaningful and effective security programs that deal with the disposal of consumer information.

NCUA invites comment on all aspects of the proposal.

Comment Period

Generally, NCUA Board's policy is to give the public at least 60 days to comment on a proposed regulation. NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2 (as amended by IRPS 03–2). The Board is issuing this Notice of Proposed Rulemaking with a comment period of 45 days so that the receipt of comments and issuance of a final rule is as closely timed with the rules issued by the Agencies as possible. The shortened comment period will allow NCUA to issue a final rule by December 4, 2004, as required by section 216. 15 U.S.C. 1681w(a)(1).

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $10 million in assets). The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

The proposed rule would require an FCU to implement appropriate controls designed to ensure the proper disposal of consumer information. An FCU would be required to develop and maintain these controls as part of implementing its existing information security program as required by § 748.0.

Any modifications to an FCU's information security program needed to address the proper disposal of consumer information could be incorporated

[4] *See* FFIEC Information Security Booklet, page 63 at: *http://www.ffiec.gov/ffiecinfobase.html_pages/it_01.html#infosec.*

[5] *See* footnote 4, *supra.*

through the process the FCU presently uses to adjust its program under paragraph III.E. of the Guidelines, particularly because of the similarities between the consumer and member information and the measures commonly used to properly dispose of both types of information. To the extent these proposed rules impose new requirements for certain types of consumer information, developing appropriate measures to properly dispose of that information likely would require only a minor modification of an FCU's existing information security program.

Because some consumer information will be member information and because segregating particular records for special treatment may entail considerable costs, NCUA believes that many FCUs, including small entities, already are likely to have implemented measures to properly dispose of both member and consumer information. In addition, NCUA and the federal banking agencies, through the Federal Financial Institutions Examination Council (FFIEC), already have issued guidance regarding their expectations concerning the proper disposal of all of an institution's paper and electronic records. *See* FFIEC Information Security Booklet, December 2002, p. 63.[6] Therefore, the proposed rules do not require any significant changes for FCUs that currently have procedures and systems designed to comply with this guidance.

NCUA anticipates that, in light of current practices relating to the disposal of information in accordance with § 748.0, the Guidelines, and the guidance issued by the FFIEC, the proposed rule would not impose undue costs on FCUs. NCUA believes that the controls that small FCUs would need to develop and implement, if any, to comply with the proposed rules likely pose a minimal economic impact on those entities. Nonetheless, NCUA specifically seeks comment on the likely burden the proposed rules would have on small FCUs, and how the proposed rule might minimize this burden, to the extent consistent with the requirements of the FACT Act.

Paperwork Reduction Act

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

[6] The FFIEC Information Security Booklet is available at: *http://www.ffiec.gov/ffiecinfobase/html_pages/it_01.html#infosec.*

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—-Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 717

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 748

Credit unions, Crime, Currency, Reporting and recordkeeping requirements, and Security measures.

By the National Credit Union Administration Board on May 20, 2004.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA proposes to amend 12 CFR chapter VII as set forth below:

PART 717—FAIR CREDIT REPORTING

1. The authority citation for part 717 is revised to read as follows:

Authority: 15 U.S.C. 1681a, 1681s, 1681w, 6801 and 6805(b).

2. Add a new subpart I to read as follows:

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 717.80–82 [Reserved]

§ 717.83 Disposal of consumer information.

(a) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in a manner consistent with the Guidelines for Safeguarding Member Information, in appendix A to part 748 of this chapter.

(b) *Rule of construction.* Nothing in this section:

(1) Requires you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alters or affects any requirement imposed under any other provision of law to maintain or destroy such a record.

(c) *Definitions.* As used in this section:

(1) *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose. Consumer information also means a compilation of such records.

(2) *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

PART 748—SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

3. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(Q); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b); 31 U.S.C. 5311 and 5318.

4. Amend § 748.0 by adding paragraph (c) to read as follows:

§ 748.0 Security program.

* * * * *

(c) Each Federal credit union, as part of its information security program, must properly dispose of any consumer information the federal credit union maintains or otherwise possesses, as required under § 717.83 of this part.

Appendix A to Part 748 [Amended]

5. Amend Appendix A to part 748 as follows:

a. Add the following sentence at the end of paragraph I.: ''These Guidelines also address standards with respect to the proper disposal of consumer information pursuant to sections 621(b)

and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w).'';

b. Add the following sentence as the end of paragraph I.A.: ''These Guidelines also apply to the proper disposal of consumer information by such entities.'';

c. Redesignate paragraphs I.B.2.a. through d. as I.B.2.c. through f.;

d. Add new paragraphs I.B.2.a. and b. to read:

a. Consumer information means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose. Consumer information also means a compilation of such records.

b. Consumer report has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

e. Amend paragraph II.B. by removing the word ''and'' after the word ''information;'' and adding the following phrase after the word ''member'' at the end of the sentence: ''; and ensure the proper disposal of consumer information in a manner consistent with the disposal of member information'';

f. Add a new paragraph III.C.4. to read as follows:

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of member information, in accordance with the provisions in paragraph III.

g. Add paragraphs III.G.3. and III.G.4. to read as follows:

3. *Effective date for measures relating to the disposal of consumer information.* Each Federal credit union must properly dispose of consumer information in a manner consistent with these Guidelines by [This date will be 90 days after the date of publication in the **Federal Register** of a final rule].

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a Federal credit union's existing contracts with its service providers with regard to any service involving the disposal of consumer information should implement the objectives of these Guidelines by [This date will be one year after the date of publication in the **Federal Register** of a final rule].

[FR Doc. 04–11902 Filed 5–27–04; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17180; Airspace Docket No. 03–AWP–03]

RIN 2120–AA66

Proposed Amendment of Restricted Area 2306C, Yuma West; AZ

AGENCY: Federal Aviation Administration, DoT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the designated altitudes and times of use for Restricted Area 2306C (R–2306C), Yuma, AZ. This proposal would raise the upper altitude of R–2306C from 17,000 feet mean sea level (MSL) to 40,000 feet MSL. It would also reduce the times of use from continuous, to 0600 to 2200 hours daily local time, other times by NOTAM. The U.S. Army requested the modification to better accommodate existing and future testing requirements at the Yuma Proving Ground, AZ. This proposed modification would not change the current lateral boundaries or activities conducted in R–2306C.

DATES: Comments must be received on or before July 12, 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 FAA Docket No. FAA–2004–17180, and Airspace Docket No. 03–AWP–03, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Office of System Operations and Safety, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

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 (FAA Docket No. FAA–2004–17180, and Airspace Docket No. 03–AWP–03) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2004–17180, and Airspace Docket No. 03–AWP–03.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov,* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, AWP–520, 15000 Aviation Boulevard, Lawndale, CA 90261.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

The current designated altitudes and times of use for R–2306C are based on

past use of the facilities at the Yuma Proving Ground, AZ. The U.S. Army has requested that action be taken to amend the altitude and times of use for R–2306C to better accommodate existing and future testing requirements of high-altitude guided parachute systems at the facility.

The Proposal

In response to a request from the U.S. Army, the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to amend the designated altitudes and times of use for R–2306C, Yuma, AZ. Specifically, this action proposes to change the designated altitudes for R–2306C from ''surface to 17,000 feet MSL, to ''surface to 40,000 feet MSL.'' This action also proposes to change the time of designation from ''continuous,'' to ''0600 to 2200 hours daily local time, other times by NOTAM.'' The U.S. Army has requested this modification to better accommodate existing and forecast testing requirements of high-altitude guided parachute systems at the Yuma Proving Ground, AZ. This action would not change the current lateral boundaries, or activities conducted within R–2306C. The restricted area would be available for joint-use, scheduled only when needed for training and available for transit by non-participating aircraft when not in use.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that 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.

Environmental Review

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.23 [Amended]

2. § 73.23 is amended as follows:

* * * * *

R–2306C Yuma West, AZ (Amended)

By removing the ''Designated altitudes. Surface to 17,000 feet MSL,'' and ''Times of Use. Continuous,'' and substituting ''Designated altitudes. Surface to 40,000 feet MSL,'' and ''Times of Use. 0600 to 2200 daily local time, other times by NOTAM.''

* * * * *

Issued in Washington, DC, May 21, 2004.

Paul Gallant,

Acting Manager, Airspace and Rules.

[FR Doc. 04–12064 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128572–03]

RIN 1545–BC24

Application of Sections 265(a)(2) and 246A in Multi-Party Financing Arrangements; Request for Comments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to an advance notice of proposed rulemaking.

SUMMARY: This document contains a correction to an advance notice of proposed rulemaking that was published in the **Federal Register** on Friday, May 7, 2004 (69 FR 25534), soliciting comments and suggestions regarding the scope and details of regulations that may be proposed under section 7701(f) of the Internal Revenue Code to address the application of sections 265(a)(2) and 246A in transactions involving related parties, pass-through entities, or other intermediaries.

FOR FURTHER INFORMATION CONTACT: Avital Grunhaus (202) 622–3930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The advance notice of proposed rulemaking (REG–128572–03) that is the subject of this correction is under sections 246A, 265(a)(2) and 7701(f) of the Internal Revenue Code.

Need for Correction

As published, the advance notice of proposed rulemaking (REG–128572–03) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the advance notice of proposed rulemaking (REG–128572–03), that was the subject of FR Doc. 04–10476, is corrected as follows:

1. On page 25534, column 2, in the preamble under the paragraph heading ''*Background*'', second full paragraph, line 5, the language, ''2004–47 (2004–20 I.R.B.), which'' is corrected to read ''2004–47 (2004–21 I.R.B.), which''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 04–12159 Filed 5–27–04; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 69, No. 104
Friday, May 28, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–043–1]

National Poultry Improvement Plan; General Conference Committee Meeting and Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan and of the Biennial Conference.

DATES: The General Conference Committee will meet on July 8, 2004, from 8 a.m. to 2 p.m. The Biennial Conference will meet on July 9, 2004, from 8 a.m. to 5 p.m. and on July 10, 2004, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 101, Conyers, GA 30094–1231; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, this Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meetings include:

1. Establishment of an active surveillance program for H5/H7 low pathogenic avian influenza (LPAI) for the commercial poultry and egg industry;

2. Establishment of a passive diagnostic surveillance program for H5/H7 LPAI for the commercial poultry and egg industry;

3. Establishment of a shared indemnity program for commercial layers and layer breeders, broilers and broiler breeders, and turkey and turkey breeders participating in the H5/H7 LPAI program; and

4. Establishment of a definition for an approved test of the NPIP.

The meetings will be open to the public. The sessions held on July 9 and July 10, 2004, will include delegates to the NPIP Biennial Conference, representing State officials and poultry industry personnel from the 48 cooperating States. However, due to time constraints, the public will not be allowed to participate in the discussions during either of the meetings. Written statements on meeting topics may be filed with the Committee before or after the meetings by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT.** Written statements may also be filed at the meetings. Please refer to Docket No. 04–043–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 24th day of May, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–12136 Filed 5–27–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Upper West Fork Weiser Vegetation Management Project, Payette National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of an environmental impact statement.

SUMMARY: In 1999, the USDA Forest Service gave notice that it would prepare an environmental impact statement (EIS) on proposed management of timber stands in the West Fork Weiser River project area to improve their health, species diversity, and productivity. The Notice of Intent (NOI) was published in the March 11, 1999 **Federal Register** (Vol. 64, No. 47, pages 12150–12151). A revised NOI was published in the December 30, 2002 **Federal Register** (Vol. 67, No. 250, page 79559). Since the initiation of this project, Forest Service management emphasis has changed. Changes have resulted from the National Fire Plan, the Healthy Forest Initiative, the Healthy Forest Restoration Act, as well as the 2003 revised Forest Plan. Therefore, the project is not longer in the planning stages, and the NOI is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Questions about this cancellation should be directed to Kimberly Brandel, New Meadows District Ranger; or Sylvia Clark, New Meadows District Environmental Coordinator, at PO Box J, New Meadows, Idaho 83654, phone (208) 347–0300 or FAX (208) 347–0309.

Dated: May 20, 2004.

Mark Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 04–12052 Filed 5–27–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: June 27, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal government identified in the notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the government.

2. If approved, the action will result in authorizing small entities to furnish the services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial & Grounds Maintenance, Avery Street Building, Public Debt Facility, Parkersburg, West Virginia.
NPA: SW Resources, Inc., Parkersburg, West Virginia.
Contract Activity: TREAS–PUB DEBT, Parkersburg, West Virginia.

Service Type/Location: Custodial Services, Naval Air Station Whidbey Island, Oak Harbor, Washington.
NPA: New Leaf, Inc., Oak Harbor, Washington.
Contract Activity: Naval Facilities Engineering Command, Oak Harbor, Washington.

Service Type/Location: Food Service, Volk Field Air National Guard, Camp Douglas, Wisconsin.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: Iowa Air National Guard, Des Moines Iowa.

Service Type/Location: Medical Transcription, VA Medical Center, Building 36, Northport, New York.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contract Activity: VA Medical Center—Northport, Northport, New York.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 04–12162 Filed 5–27–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 27, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 2, and April 9, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 17391, and 18868/18869) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. The action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Air Force Physical Training Uniform, Jacket—50% of the Defense Supply Center Philadelphia's requirement.
8415–01–518–4594;
8415–01–518–4599;
8415–01–518–4600;
8415–01–518–4601;
8415–01–518–4603;
8415–01–518–4604;
8415–01–518–4605;
8415–01–518–4607;
8415–01–518–4608;
8415–01–518–4609;
8415–01–518–4610;
8415–01–518–4611;
8415–01–518–4612;
8415–01–518–4613;
8415–01–518–4615;
8415–01–518–4616;
8415–01–518–4617;
8415–01–518–4618;
8415–01–518–4619;
8415–01–518–4620;
8415–01–518–4621;
8415–01–518–4622;
8415–01–518–4623;
8415–01–518–4647.
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland at its facility in Salisbury, Maryland
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Product/NSN: Air Force Physical Training Uniform, Pant—50% of the Defense Supply Center Philadelphia's requirement.
8415–01–518–4561;
8415–01–518–4562;
8415–01–518–4563;
8415–01–518–4564;
8415–01–518–4565;
8415–01–518–4566;
8415–01–518–4567;
8415–01–518–4568;
8415–01–518–4570;
8415–01–518–4571;
8415–01–518–4572;
8415–01–518–4573;
8415–01–518–4574;
8415–01–518–4575;
8415–01–518–4576;
8415–01–518–4577;
8415–01–518–4578;
8415–01–518–4579;
8415–01–518–4580;
8415–01–518–4581;

8415–01–518–4582;
8415–01–518–4583;
8415–01–518–4584;
8415–01–518–4585.
NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York
NPA: El Paso Lighthouse for the Blind, El Paso, Texas
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina at its facility in Louisville, Kentucky
NPA: Lions Services, Inc., Charlotte, North Carolina
NPA: New York City Industries for the Blind, Inc., Brooklyn, New York
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Product/NSN: Gloves, Disposable
8415–01–392–8448
NPA: Bestwork Industries for the Blind, Inc., Runnemede, New Jersey
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Product/NSN: Three Wheel Tape Dispenser
7520–00–634–6724
Product/NSN: Two Wheel Tape Dispenser
7520–00–285–1772
NPA: The Arc of Bergen and Passaic Counties, Inc., Hackensack, New Jersey
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Services

Service Type/Location: Custodial Services Food & Drug Administration, CDER Lab/Office Building, White Oak, Maryland
NPA: Alliance, Inc., Baltimore, Maryland
Contract Activity: GSA/PBS National Capitol Region, Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 04–12163 Filed 5–27–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 01–BXA–17]

Decision and Order

On December 10, 2001 the Bureau of Industry and Security (''BIS'') [1] issued a charging letter against the respondent, Jason Liao, individually and doing business as JFD International (collectively referred to as ''Liao''), that alleged five violations of the Export Administration Regulations,[2] which were issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''Act'').[3]

Specifically, BIS charged that (i) on or about December 9, 1996, Liao exported detector log video amplifiers (DLVAs) from the United States to the People's Republic of China (''PRC'') without the validated export license required under Section 772A.1(b) of the former Regulations; (ii) in connection with the December 9, 1996 export, Liao knew or had reason to know that a validated export license was required, in violation of Section 787A.4(a) of the former Regulations; (iii) on or about January 27, 1997, Liao exported DLVAs from the United States to the PRC without the license required under Sections 742.4 and 742.5 of the Regulations; (iv) in connection with the January 27, 1997 export, Liao knew or had reason to know that a license was required, in violation of Section 764.2(e) of the Regulations; and (v) Liao aided and abetted the release of controlled technology to three PRC nationals in violation of Section 764.2(b) of the Regulations by issuing a letter on or about July 18, 1997 to the PRC nationals inviting them the United States, knowing that Suntek Microwave Inc. would release U.S.-origin technology to them. The PRC nationals subsequently entered the United States and Suntek did release U.S.-origin technology to them.

On October 21, 2003, the Administrative Law Judge (''ALJ'') conducted an evidentiary hearing in this matter. On April 5, 2004, the ALJ issued a Recommended Decision and Order, in which he found that Liao committed the five violations described above. With regard to the unlawful exports of national security controlled DLVAs to the PRC, the ALJ determined that, based on uncontested evidence, Liao delivered 70 DLVAs to a customer in the PRC, which was controlled by the PRC, without obtaining the required export licenses.

In addition, based on evidence that Liao had previously obtained licenses for exports of similar amplifiers to the PRC and on the sworn testimony of two witnesses that Liao knew that licenses were required for the export of the 70 DLVAs to the PRC, the ALJ found that Liao knew or should have known that these exports required a license from the Commerce Department.

Finally, the ALJ held that Liao aided and abetted the transfer of controlled technology to three PRC nationals without the required export license by inviting and facilitating the travel of the PRC nationals to the United States for the purpose of obtaining the controlled technology. The ALJ recommended a monetary penalty of $55,000, the denial of Liao's export privileges for 20 years, and the exclusion of Liao from practice before BIS for a period of 20 years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, have been referred to me for final action under Section 766.22 of the Regulations. Based on my review of the entire record, I find that the record supports the ALJ's findings of fact and conclusions of law regarding the liability of Liao for each of the above-referenced charges. I also find that the penalty recommended by the ALJ is appropriate, given the knowing nature of the violations, the scope of the respondent's efforts to make unauthorized exports, and the importance of preventing future unauthorized exports. I therefore affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.[4]

[1] The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau was changed pursuant to an order signed by the Secretary of Commerce on April 16, 2002.

[2] The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations (15 CFR Parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter ''the former Regulations''), and 15 CFR Parts 768–799 (1997) (''the Regulations''). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR Parts 768A–799A. As an interim measure that was part of the transition of newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996. The 2003 Regulations establish the procedures that apply to this matter.

[3] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

[4] There is a clarification to the ALJ's Recommended Decision and Order that needs to be made. In the Recommended Decision and Order, the ALJ concludes that Liao released U.S.-origin technology to PRC nationals without the required export licenses: ''In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao released United States-origin technology to three Chinese nationals without a license as required by 15 CFR 734.2(b).'' ALJ Recommend Decision and Order, 25. BIS, however, did not charge Liao with improperly transferring controlled technology to PRC nationals, and did not submit any evidence supporting this conclusion. I therefore vacate this portion of the ALJ's

It is hereby ordered,

First, that a civil penalty of $55,000 is assessed against Jason Liao, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Liao will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that, for a period of 20 years from the date on which this Order takes effect, Jason Liao shall be excluded from acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity for any license application or other matter before the Bureau of Industry and security.

Fourth, that, for a period of 20 years from the date on which this Order takes effect, Jason Liao, individually and doing business as JFD International, 3370 Monroe Street, Santa Clara, California 95051, and all of his successors or assigns and, when acting for him or on his behalf, his officers, representatives, agents, and employees (individually referred to as a ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the Untied States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fifth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transactions to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, ''servicing'' means installation, maintenance, repair, modification, or testing.

Sixth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related service may also be made subject to the provisions of this Order.

Seventh, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. Additionally, the ALJ's Recommended Decision and Order, except the section with the heading ''Recommended Order,'' shall also be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: May 24, 2004.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, Export Enforcement Team, Room H–6883, 14th Street and Constitution Avenue, NW., Washington, DC 20230, ATTN: Sharon Gardner.

Notice

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), and the Federal Claims Collection Standards (31 CFR Parts 900–904 (2002)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. 3717 and 31 CFR 901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. 3717 and 31 CFR 901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with section 901.2(b) of the Federal Claims Collection Standards (31 CFR 901.2(b)).

Office of the Administrative Law Judge

Alameda, California

Recommended Decision and Order

Before:

Recommended Decision and Order. However, I affirm the ALJ's conclusion that Liao aided and abetted their release of controlled technology to PRC nationals without the required license.

Hon. Parlen L. McKenna, Administrative Law Judge.

Appearances:

Mi-Yong Kim, Esq., For the Bureau of Industry and Security.

Jennifer Zhong.

Lay Representative for Jason Liao, individually and doing business as JFD International.

Preliminary Statement

On December 5, 2001, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BIS or Bureau) [1] charged Jason Liao, individually, and doing business as JFD International (hereinafter referred collectively as Liao) with five violations of the Export Administration Regulations (EAR), codified at 15 CFR 730–774 (2001) issued pursuant to the Export Administration Act (EAA) of 1979, as amended (50 U.S.C. app. sections 2401–2402 (1991 and Supp. 2001)).[2] BIS seeks $11,000 per violation, denial of export privileges, and/or exclusion from practice before BIS. The charges were as follows:

Charge 1 alleged Liao exported detector log video amplifiers (DLVA or amplifiers) from the United States to the People's Republic of China (China) on or about December 9, 1996. Liao exported the DLVAs without a license as required by 15 CFR 772A.1(b). This conduct, contrary to the Act, violated 15 CFR 787A.6 of the former regulations.

Charge 2 alleged Liao knew or had reason to know that the export of DLVAs to China required a license as described in Charge 1. Liao's act of selling or transferring the DLVAs with knowledge of the license requirement violated 15 CFR 787A.4 of the former regulations.

Charge 3 alleged Liao exported DLVAs from the United States to China without a license as required by 15 CFR 742.2 and 742.5 on or about January 27, 1997. Liao's conduct was contrary to the Act and violated 15 CFR 764.2(a).

Charge 4 alleged Liao knew or had reason to know that export of DLVAs to China required a license as described in Charge 3. Liao's act of selling or transferring DLVAs with knowledge of the license requirement violated 15 CFR 764.2(e).

Charge 5 alleged Liao issued an invitation letter to visit the United States to Mr. Hu Changhong, which also included invitations to Mr. Wang Yongan, and Mr. Qiu Yijie, all citizens of China. Liao knew Suntek Microwave, Inc. (Suntek) would release United States—origin technology to them during their visits to the United States. These Chinese citizens came to the United States pursuant to that invitation and Suntek released United States-origin technology to them. The act of releasing technology to Chinese citizens constituted an export under section 734.2(b) and required a license issued from BIS. Liao's conduct of aiding or abetting a prohibited act violated section 764.2(b).

On February 5, 2002, the Respondent filed a timely answer denying all of the charges. Importantly, on October 19, 2000, the United States Attorneys Office (San Jose Division) filed felony charges against Silicon Telecom Industries, Inc., Charley Kuan, and Jason Liao. The alleged violations were conspiracy (18 U.S.C. 371); and Violation of Export Administration Regulations regarding exports to China (Title 50, U.S.C. 1705 (b)). Rather than defending against the indictment, Liao fled the United States and his current location is unknown. Mr. Kuan entered into a Plea Agreement with the United States Attorney and entered a plea of Guilty to the Charges.

Finding good cause shown, the parties were granted adequate time for settlement discussions prior to the assignment of a judge and the setting of a hearing date. *See* 15 CFR § 766.17(d).[3] The parties did not reach settlement and on May 22, 2003, the Chief Administrative Law Judge issued an Order of Assignment of Administrative Law Judge and Notice of Hearing. By that Order, the Chief Administrative Law Judge took notice that Liao's wife, Jennifer Zhong, previously filed documentation on his behalf. Therefore, Ms. Zhong was directed to file a Notice of Appearance, signed by Liao and herself, designating Ms. Zhong as Liao's representative in this matter.

The undersigned Judge scheduled a hearing to commence on October 21, 2003. The BIS regulations provide, ''[a]ll hearings will be held in Washington, DC, unless the administrative law judge determines, for good cause shown, that another location would better serve the interests of justice.'' 15 CFR 766.13. Here, Ms. Zhong explained that traveling to Washington, DC, to represent Liao would cause her extreme economic hardship. Further, Ms. Zhong stated that all of the witnesses she anticipated calling were located in California. Without objection from BIS, the undersigned concluded that good cause was shown and noticed the hearing to be held on October 21, 2003 in Alameda, California.

On October 3, 2003, BIS filed a Request for a Chinese (Mandarin) Interpreter. That request was granted and a Teresa Wong was authorized to serve as the interpreter.

The parties were ordered to file witness and exhibit lists no later than the close of business on October 19, 2003 (See Attachment A). After the hearing, the record remained open until December 10, 2003, for filing of post-hearing briefs. BIS filed a motion on December 8, 2003, requesting additional time to file its post-hearing brief. The Bureau's request to extend the filing date for a post-hearing brief to December 15, 2003 was granted. On November 8, 2003, Jennifer Zhong filed a letter and seven exhibits. Ms. Zhong's filing was construed as a post-hearing brief. Upon review of the documents, the undersigned finds that the filing contained materials not previously admitted into the record. Therefore, Ms. Zhong's proffer is found to be untimely and are hereby rejected. Further, Ms. Zhong did not provide enumerated proposed findings of facts and conclusions of law. Rulings on enumerated proposed findings of fact and conclusions of law submitted by BIS are set forth in *Attachment B.*

Attachment C contains applicable regulations that were referenced in the Charging Letter filed against Liao and further referenced in this Recommended Decision and Order. Parties may refer to *Attachment D* for details regarding review by the Under Secretary and appeal procedures.

II. Applicable Statutes and Regulations

The acts constituting violations of the export control laws and regulations alleged by BIS in the Charging Letter occurred in 1996 and 1997. Charges 1 and 2 concern acts that occurred in 1996. Charges 3, 4, and 5 involve acts the occurred in 1997. Thus, the regulations extant for each of the respective years is applicable.

[1] The Bureau of Export Administration issued the charging letter on December 5, 2001. Through an internal organizational order, the Department of Commerce changed the name of the Bureau of Export Administration to Bureau of Industry and Security (BIS). *See* Industry and Security Programs: Change of Name, 67 Fed. Reg. 20630 (Apr. 26, 2002). Pursuant to the Savings Provision of the order, ''Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security.'' *Id.* at 20631.

[2] BIS's authority under the EAA has been re-authorized three times through various Executive Orders. The most recent Executive Order continues the EAA citing national security reasons in Executive Order 13222. *See* 68 FR 47833 (August 7, 2003).

[3] Administrative enforcement proceedings (including review by the Under Secretary) shall conclude within one year of submission of the charging letter, unless good cause shown. 15 CFR § 766(17)(d).

A. Statutes/Executive Orders

On August 20, 2001, the EAA and underlying regulations expired. *See* 50 U.S.C. app. § 2419. Three days prior to the termination date, the President signed an Executive Order continuing the regulations declaring that the lapse of the EAA constituted an ''unusual and extraordinary threat to the national security, foreign policy, and economy of the United States''. *See* Exec. Order. No. 13222, 3 CFR at 783–784, (2001). Exercising authority under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701–1706 (2000), the President maintained the effectiveness of the EAA and all regulations thereunder. The effectiveness of the export control laws and regulations were further extended by Notice issued by the President on August 14, 2002 and August 7, 2003. *See* Notice of August 14, 2002: Continuation of Emergency Regarding Export Control Regulations, reprinted in 3 CFR at 306 (2003) and Notice of August 7, 2003: Continuation of Emergency Regarding Export Control Regulations. The continuation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. *See Wisconsin Project on Nuclear Arms Control* v. *United States Dep't of Commerce*, 317 F.3d 275, 278–279 (D.C. Cir. 2003); *Times Publ'g Co.* v. *United States Department of Commerce*, 236 F3d 1286, 1290 (11 Cir. 2001).

B. Regulations

The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 CFR Parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (the former Regulations)), and 15 CFR Parts 730–774 (1997) (the Regulations)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR Parts 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR Parts 730–774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The Regulations establish the procedures that apply to this matter.

III. Findings of Fact

The following Findings of Fact are based on the entire record including the documentary evidence and the testimony of the witnesses who testified at the hearing. The facts of this case are as follows:

A. Background

1. Jason Liao, a United States Citizen, received a doctorate in civil engineering from Colorado State University. (Gov't Ex. 12).[4]

2. Liao operated JFD International (JFD) with his wife, Jennifer Zhong, and Francis Chang out of their home in Santa Clara, California. (Gov't Ex. 12).

3. JFD was a sales and marketing company representing United States manufacturers to customers in China and Korea. (Gov't Ex. 12).

4. In 1996, Charlie Kuan, Jason Liao, William Yu, and Chengdu Jeway Microwave Communication Corp. (Jeway) formed Suntek Microwave, Inc. (Suntek), a joint venture engaged in research, development, marketing and production of microwave communication products. (Gov't Ex. 4).

5. Suntek's Pre-Incorporation Agreement recorded the initial shareholder contribution as: Liao 10%; Jeway Corporation 50%; Charlie Kuan 25%; William Yu 10%; and Key Employee Team 5%. (Gov't Ex. 4.)

6. Shareholder Jeway is a Chinese registered joint venture which entered into a contract with Southwest Research Institute of Electronic Equipment (SIWI) in April of 1997. SIWI is a Chinese Government controlled company located in Chengdu, China (Gov't Ex. 5). The purpose of the contract was to transfer microwave component manufacturing technology from Jeway to SIWI. (Tr. 49; Gov't Ex. 5, 32).

7. The Chairman of the Board for Jeway is Wang Lei Pei, former manager of a Chinese Government controlled company known as the 29th Research Institute of the Ministry of Electronics (29th Institute) located in Chengdu, China. (Tr. 45, 46, 49, and 126; Gov't Ex. 5, 9). Previously, Mr. Pei managed SIWI. (Tr. 126; Gov't Ex. 32).

8. Mr. Kuan hired Liao as the Sales and Marketing Manager for Suntek in 1996. (Tr. 143; Gov't Ex. 12).

B. Export of Digital Video Log Amplifiers to China Without a License

9. Following the formation of Suntek in September 1996, Liao obtained specifications for 70 detector log video amplifiers (DLVA) Model SKA 1000 from Kunshan Technology Development Company (Kunshan) in Yangzhou, China. (Tr. 47–48; Gov't Ex. 12, 32).[5]

10. Upon receipt of the order for 70 DLVAs, Liao forwarded the specifications to Suntek for manufacturing 70 units of Model SKA 1000. (Tr. 47–48; Gov't Ex. 32).

11. The Purchase Order, Quotation, Packing List, Invoices and checks generated for Model SKA 1000 list the California based company Silicon Valley Scientific Instruments Corp. (SVSIC) as the purchaser. (Tr. 56–59; Gov't Ex. 12, 32).[6]

12. Model SKA 1000 is a solid-state electronic amplifier and its primary purpose is to increase an electronic signal (Tr. 26).

13. Model SKA 1000 is used for commercial and military applications; therefore the Department of Commerce placed the commodity of the Commerce Control List for national security reasons. (Tr. 26–28). The Department of Commerce issues export licenses for such commodities exported to all countries. (Tr. 24).

14. Generally, Model SKA 1000 is made for general use. However, customers can provide a manufacturer with specifications to customize the commodity. (Tr. 28).

15. The specifications Liao received from the Chinese company Kunshan for Model SKA 1000 had a frequency range of 8–12 gigahertz. (Tr. 38; Gov't Ex.3).

16. Model SKA 1000 is classified as a Category 3 commodity on the Commerce Control List. (Tr. 25–26).

17. John Verna, BIS licensing officer and electronic engineer responsible for evaluation of export applications, testified as an expert concerning Commerce Control List Category 3 and 4. (Tr. 23–35; Gov't Ex. 2, 16).

18. License determinations are made on a case-by-case basis and evaluation of intelligence shared from other federal agencies. Specifically, license applications for certain commodities are

[4] The citations in this Initial Decision and Order are as follows: Transcript followed by the page number, (Tr. __); Agency Exhibit followed by number (Gov't Ex. __); and Respondent Exhibit followed by a letter (Resp Ex. __).

[5] In an interview with Special Agent Benjamin Robinson of BIS, Liao stated the purchaser of the 70 DLVAs was Santa Trading Company in Chengdu, China. Further, Liao stated that he knew Santa was not the end user. (Gov't. Ex. 12).

[6] BIS did not offer testimony during the hearing detailing the relationship between SVSIC and Liao. However, the record does include an interview with Ling Wang, President and Owner of SVSIC. *See* Report of Investigative Activity at Gov't Ex. 12. (Tr. 144–146). During Ms. Wang's interview, she described Liao as an acquaintance and he asked her to act as the ''middleman'' on behalf of his company, JFD International, to place an order for 79 DLVAs Model SKA 1000 to Suntek. (Gov't Ex. 12). BIS entered the document into the record without objection by Liao.

reviewed and controlled for national security reasons. (Tr. 24–34).

19. Mr. Verna explained Category 3 commodities are regulated by Export Commodity Control Number (ECCN) 3A001.b.4.A. and a license is required if amplifiers exported to China exceed a frequency of 10.5 gigahertz. (Tr. 27–28, 39; Gov't Ex. 16).

20. Model SKA 1000 amplifiers are controlled for export to China for national security reasons and an exporter is required to obtain a license prior to export. (Tr. 34; Gov't Ex. 2, 16).

21. Mr. Verna concluded that during the time period of October, 1996, through July 2000, a license was required for Liao's order of 70 Model SKA 1000 amplifiers exported to China. The reason a license was required was that the frequency range of 8–12 gigahertz exceeded the allowable 10.5 gigahertz. (Tr. 33–36, 39: Gov't Ex. 2, 16).

22. David Ports, a licensing officer for the Department of commerce, reviews license applications for dual use commodities. (Tr. 40–41).

23. In addition to licensing controls for amplifiers exceeding a frequency of 10.5 gigahertz, Mr. Ports testified that the technology associated with such commodities is also controlled under ECCN 3E001. (Tr. 41–42; Gov't Ex. 15).

24. Mr. Ports determined that the time period set forth from October of 1996, through July 2000, amplifier technology was controlled for national security reasons and an individual validated license was required for export to China or any foreign national. (Tr. 41–43; Gov't Ex. 15). Further, the transfer or release of amplifier technology to any foreign national included any foreign national in the United States. (Tr. 43; Gov't Ex. 15).

25. Mr. Ports confirmed that license exceptions are available for exports but not to countries listed in Group D:1. (Tr. 43).

26. China is a country in Group D:1; therefore no license exceptions are available. (Tr. 43).

C. Sale of 70 Digital Log Video Amplifiers by Liao

27. Liao arranged the transition between Suntek and SVSIC for 70 DLVAs with the assistance of SVSIC employee, Francis Chang.[7] (Tr. 47–49; Gov't Ex. 12).

28. The Packing Lists and Invoices produced by Suntek showed the DLVAs were shipped to SVSIC; however, Liao actually received and took possession of the 70 amplfiers and hand-delivered the units to SVSIC. (Tr. 56–59; Gov't Ex. 12, 32).

29. Prime Transportation Corporation is a company operated out of Liao's home and was responsible for payments made to Suntek for the DLVAs. (Tr. 71–73; Gov't Ex. 12, 13).

30. On or about December 9, 1996, and on or about January 27, 1997, Liao hand-carried some of the DLVAs to China. (Tr. 49, 60, 69–70, 89; Gov't Ex. 12). Liao sent the remaining units to China via Federal Express. (Tr. 143–144; Gov't Ex. 12).

31. Suntek terminated Liao on May 16, 1997, for exporting 70 controlled amplifers to China without a license and collecting a commission on the sale of the amplifiers without Mr. Kuan's approval. (Tr. 69–71; Gov't Ex. 9, 13).

D. Liao's Knowledge of Licensing Requirement

32. Prior to Liao's employment at Suntek, he worked at Menlo Industries (Menlo) with the marketing department for exports to China. (Tr. 105–106).

33. In 1995, JFD assisted Menlo to obtain a license from the Department of Commerce for microwave amplifiers with a frequency range between 6–18 gigahertz. The contact person listed on the application submitted by JFD was Liao. (Gov't Ex. 27).

34. The amplifiers manufactured by Menlo and the DLVAs manufactured and exported in this case had the same technical parameters and were classified under the same ECCN number classification, 3A001.b.4.a.

35. In 1996, Frances Chang, a JFD employee, purchased amplifiers, ECCN number 3A01A, from DBS Microwave Inc. (DBS Microwave). The Invoice from DBS referenced JFD as the shipping and billing address.

36. The Invoice indicated that JFD would apply for the export license for this transaction with DBS Microwave. (Tr. 133–135; Gov't Ex. 36).

E. Invitations Were Sent to Chinese Nationals To Visit the United States in Order To Obtain Amplifier Technology

37. Jeway, Chinese controlled and initial shareholder of Suntek, sent employees to the United States for the purpose of assisting Suntek to manufacture amplifiers and to obtain the technology associated with the amplifiers. (Tr. 77–82; Gov't Ex. 19).

38. The visiting Chinese nationals worked with the Vice President of Engineering of Suntek and acquired the manufacturing knowledge regarding the amplifiers. The knowledge obtained by the visiting Chinese Nationals was detrimental to the national security of the United States. (Tr. 27–28, 77–78).

39. Jennifer Zhong, acting on behalf of JFD, forwarded a letter dated July 18, 1997, to Mr. Hu Changhong, Project Manager of SIWI Electronics, inviting him and two colleagues, Mr. Wang Yongan and Mr. Qiu Yijie, to visit the United States from August 5, 1997 through October 15, 1997. (Tr. 78–799; Gov't Ex. 9, 17, and 25).

40. JFD facilitated the visits by Chinese nationals. (Tr. 83–84; Gov't Ex. 17).

41. JFD assumed the expenses incurred and obtained the necessary visas in an effort to facilitate the visit by the Chinese nationals. (Tr. 86, 88; Gov't Ex. 9, 17, 22–25).

IV. Ultimate Findings of Fact and Conclusions of Law

1. Jason Liao, individually and doing business as JFD International, the subject matter of this proceeding, are properly within the jurisdiction of the Export Administration Act of 1979 (50 U.S.C. app. sections 2401–2420) and the Export Administration Regulations (15 CFR Parts 730–774).

2. BIS established by a preponderance of reliable, probative and substantial evidence that on or about December 9, 1996, Liao exported detector log video amplifiers from the United States to China without a validated export license as required under Section 772A.1(b) of the Former Regulations. Liao's conduct in exporting DLVAs without a license was contrary to the provisions of the Act and in violation of section 787A.6 of the Former Regulations.

3. BIS established by a preponderance of reliable, probative and substantial evidence that Liao knew or had reason to know that export of detector log video amplifiers on or about December 9, 1996, to China required a valid license under Sections 742A.2 and 742A.5 of the Former Regulations. Liao's conduct resulted in a violation of 787A.4 of the Former Regulations.

4. BIS established by a preponderance of reliable, probative, and substantial evidence that on or about January 27, 1997, Liao exported detector log video amplifiers from the United States to China without a license as required under Sections 742.4 and 742.5 of the Regulations. Liao violated 764.2(a) of the Regulations by exporting commodities from the United States without a license. Liao's conduct was contrary to the provisions of the Act.

5. BIS established by a preponderance of reliable, probative, and substantial evidence that Liao knew or had reason to know that export of detector log video amplifiers on or about January 27, 1997,

[7] JFD also employed Francis Chang. Mr. Chang's responsibilities at JFD included price quotes, shipping and receiving. (Gov't Ex. 12).

to China required a license in the violation of 764.2(e) the Regulations.

6. BIS established by a preponderance of reliable, probative, and substantial evidence that on or about July 18, 1997, Liao issued an invitation letter to Mr. Hu Changhong, inviting him and fellow colleagues, M. Wang Yongan and Mr. Qiu Yije, to the United states. All three men were citizens of China, not citizens or permanent resident aliens of the United States. At the time Liao issued the invitation letter, he knew or had reason to know that Suntek would release United States-origin technology to them. The three individuals entered the United States and Suntek released United States-origin technology to them. The release of information to the three individuals from China constituted an export under 734.2(b) and a license was required. By causing, aiding or abetting a prohibited act, Liao violated Section 764.2(b) of the Regulations.

V. Discussion

A. Administrative Procedure Act

The EAA generally excludes application of the Administrative Procedure Act, as amended (5 U.S.C. 551, 553–559; and sections 701 to 706. *See* 50 U.S.C. app. section 2412(a)). Further, Title 15 of the Code of Federal Regulations for Part 766 Section 1 states in part, ''This part does not confer any procedural rights or impose any requirements based on the Administrative Procedure Act (APA) for proceedings charging violations under the EAA, except as expressly provided for in this part.'' However, the EAA does provide an exception to 50 U.S.C. app. section 2412(a) and 15 CFR 766.1. Actions involving civil penalties and sanctions for violations arising under 50 U.S.C. app. sections 2407 and 2410, allow the party charged with an EAR violation to receive a formal complaint and at his request, a hearing before an administrative law judge.[8] 50 U.S.C. app. section 2412(c)(1). Any such hearings held are conducted in accordance with sections 556 and 557 of the APA as provided pursuant to 15 CFR Part 766. *See* 50 U.S.C. app. section 2412(c)(1). This case involved violations of section 2410; therefore the administrative proceeding was conducted in accordance with section 556 and 557 of the APA.

The undersigned conducted the October 21, 2003, hearing in accordance with provisions of a letter from the United States Office of Personnel Management (OPM) and an interagency reimbursable agreement between the Coast Guard and the BIS dated December 30, 2002. ''The OPM letter and the reimbursable agreement authorize Coast Guard Administrative Law Judges to adjudicate formal on-the-record hearings for cases involving violations of U.S. export laws and regulations.'' *In the Matter of Mabdulamir Mahdi*, 68 FR 57406, 57408 (October 3, 2003).

B. Burden of Proof

The burden of proof is on the Agency. In order to sustain that burden, BIS must prove the charges by reliable, probative and substantial evidence. 5 U.S.C. 556(d); *see also Steadman* v. *Securities and Exchange Commission*, 450 U.S. 91, 98 (1981). In *Steadman*, the Supreme Court concluded that the legislative history of the APA intended the establishment of the traditional preponderance of evidence standard applied in civil proceedings. *Id.* at 102. In other words, the burden of satisfying the preponderance standard is accomplished when the trier of fact believes the existence of a fact is more probable than its nonexistence. *Concrete Pipe & Products* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 622 (1993).

Here, BIS submitted overwhelming evidence to support the five charges filed against Liao. BIS offered the testimony of six witnesses without objection. Further, BIS proffered Exhibits 1 through 38 into evidence without objection. (TR. 11–12, 112, 132, 148–149). In rebuttal, Ms. Zhong proffered fourteen exhibits for admission into evidence. (Tr. 117–122). Exhibits 2, 3, 5, 6, 7, and 8 were not admitted because they were duplicative of the Government's exhibits. (Tr. 117). Exhibits 1, 4, 7, 9, 10, 11, 12, and 14 were excluded for lack of relevancy. Further, exhibits 10 and 11 were rejected since they were written in Chinese, not translated in English, not dated, and not served on BIS until two days prior to the hearing. (Tr. 122). Finally, Ms. Zhong presented the testimony of one witness, Francis Chang.

C. Violations of the Export Administration Act and Regulations

1. Violations of 15 CFR 787A.6—Export, Diversion, Reexport, Transshipment

In Charge 1, BIS alleged Liao exported detector video amplifiers (DLVA) on or about December 9, 1996, from the United States to China without a valid export license as required under 15 CFR 772A.1(b) of the Former Regulations. The failure to obtain a license to export the DLVAs resulted in a violation of 15 CFR 787A.6. Section 787A.6 basically provides that no person may export commodities or technical data to any person or destination for any use in violation of the terms, provisions, or conditions of the EAA or any regulation issued under the Act.

Liao violated Export Administration Regulation 15 CFR 772A.1(b), which requires a person to obtain a license for the export of commodities or technical data. Title 50 of the United States Code Appendix § 2415(A) provides, ''the term 'export' means—an actual shipment, transfer, or transmission of good or technology out of the United States.''

On or about December 9, 1996, Suntek released thirty (30) Model SKA 1000 amplifiers to Liao. (Tr. 49; Gov't Ex. 12, 32). According to the purchase order, packing lists, and invoices, the amplifiers were to be shipped to SVSIC. (Gov't Ex. 12). However, Liao exported the amplifiers out of the United States by hand-carrying the amplifiers to China. (Tr. 49, 60, 69–70, 89; 143–144; Gov't Ex. 6, 12). On or about January 27, 1997, Suntek again released forty (40) Model SKA 1000 amplifiers to Liao. (Gov't Ex. 12, 32). Liao exported this second group of amplifiers out of the United States to China via Federal Express. (Tr. 143–144; Gov't Ex. 6, 12). The export of seventy (70) amplifiers out of the United States to China by Liao was accomplished without an export license from the United States Department of Commerce. (Tr. 69–70; 143, 144; Gov't Ex. 6, 12, 28, 32).

In consideration of the entire record, including the lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 CFR 787A.6 and failed to obtain a license to export DLVAs to China as required by 15 CFR 772A.1(b).

2. Violation of 15 CFR 787A.4(a) of the Former Regulations—Acting With Knowledge of a Violation; Possession With Intent To Export Illegally

In Charge 2, BIS alleged Liao knew or had reason to know that export of the DLVAs to China as described in Charge 1, required a validated export license; therefore he violated 15 CFR 787A.4 of the Former Regulations. According to section 787A.4(a), no person may sell or transfer any commodity or technical data, exported or cause to be exported from the United States, which is subject to EAR, with knowledge of an EAA violation or violation of any regulation, has occurred, is about to occur, or is intended to occur with respect to any transaction.

[8] Section 2407 addresses prohibitions and exceptions to foreign boycotts and export violations of the EAA and underlying regulations are addressed in section 2410.

The issue for determination is whether Liao knew his failure to obtain an export license was in violation of Section 772A.1. Previously, Menlo employed Liao where he worked in the marketing department as a representative for the China market. (Tr. 105–107; Gov't Ex. 14). BIS introduced evidence from 1995 wherein Liao's company, JFD, obtained a license from the Department of Commerce for export of amplifiers to China on behalf of JFD and Menlo. (Gov't Ex. 27). The amplifiers at issue in this hearing and the amplifiers manufactured at Menlo and exported by JFD in 1995, were the same model and classified under the same Export Commodity Control Number (ECCN) 3A01A.b.4.a. (Tr. 72–74; Gov't Ex. 9, 27). The export license obtained for Menlo listed JFD as the applicant and Jason Liao as the contact person. (Gov't Ex. 27). Moreover, Charlie Kuan also worked with Liao at Menlo during this time period and stated both men, Kuan and Liao, knew a license was required for export of amplifiers. (Tr. 73–74; Gov't Ex. 9, 14).

A similar transaction between JFD and DBS Microwave included the export of amplifiers with the same ECCN number, 3A01A.b.4.a, for export to China in 1996. (Tr. 133–135; Gov't Ex. 36). The invoices noted that JFD would apply for the required export license prior to shipment outside the United States. (Gov't Ex. 36). Further, Francis Chang, a JFD employee, testified that during the transaction with DBS Microwave, Liao knew a license was required. (Tr. 135).

During Liao's employment with Suntek, he knowingly arranged the export of DLVAs to a Chinese controlled company through his company JFD. Suntek Production Manager, William Yu, testified Liao knew the seventy (70) amplifiers exported to China required a license.[9] (Tr. 107; Gov't Ex. 14). Charlie Kuan, President and Chairman of Suntek, further corroborated Mr. Yu's testimony. Specifically, Mr. Kuan testified that Liao knew an export license was required and assured Mr. Kuan he would be responsible for obtaining an export license. (Tr. 66–69).

In consideration of the entire record, including the lack of any countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 CFR 787A.4 by acting with knowledge of a violation of the EAA.

3. Respondent Engaged in Conduct Prohibited by the EAA and the EAR Resulting in a Violation of 15 CFR 764.2.

In Charge 3, BIS alleged on or about January 27, 1997, Liao exported DLVAs from the United States to China without a license as required under Sections 742.4(a) and 742.5(a). Section 742.4(a) restricts the export of items that would make a significant contribution to the military potential of any other country that would prove detrimental to the national security of the United States. Consequently, a license is required for all destinations, except Canada, for all items regulated by Export Commodity Control Number on the Commerce Control List. *See* 15 CFR 742.4(a). The purpose of export controls in 15 CFR 742.4(a) is to prevent contributions to the military potential of countries in Country Group D:1. *Id.* Moreover, extended review or denial of a license will occur on applications to China where the commodity would make a direct and significant contribution to electronic and anti-submarine warfare, intelligence gathering, power projection or air superiority. *See* 15 CFR 742.4(b)(7).

The second regulation relied upon by BIS for violation of the EAR is 15 CFR 742.5 missile technology. In an effort to limit missile proliferation, a license is required for the export of items related to the design, development, production or use of missiles. 15 CFR 742.5. The purpose of this regulatory control is to ensure the national security of the United States. *Id.*

Here, BIS presented evidence that Liao engaged in prohibited conduct by exporting commodities regulated for national security reasons. In 1996 and 1997, Liao exported 70 amplifiers with a frequency range of 8–12 gigahertz to China. (Tr. 38; Gov't Ex. 3). The amplifiers are dual use electronics that can be used for commercial or military applications. (Tr. 26–28). National security concerns arise because Model SKA 1000 amplifiers can be used for the following military applications; radar, missile, radio, electronic warfare equipment, electronic countermeasure equipment, ESM, traveling wave tube replacement and simulators. (Tr. 27–28; Gov't Ex. 3). During this time period, Liao did not obtain a license for export of amplifiers to China. (Tr. 33–36, 39; Gov't Ex. 2, 16).

Given the above, Liao further violated the EAR by releasing technology that could potentially benefit China's military. Charlie Kuan, President of Suntek, explained one of the goals of Suntek was to bring Jeway employees to the United States to manufacture amplifiers and obtain technology associated with the amplifiers. (Tr. 75–89). Moreover, Liao's company, JFD International, arranged the visit of Chinese foreign nationals to Suntek for the purpose of learning about the manufacturing of amplifiers and associated technology. (Tr. 83–84; Gov't Ex. 17). Review of Government Exhibit 5, revealed JFD entered into a joint venture for the expressed purpose of passing technology gained from training in the United States to Chinese controlled company Jeway. (Gov't Ex. 5).

In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 CFR 764.2(a) by exporting Model SKA 1000 amplifiers, with a frequency range of 8–12 gigahertz, and associated technology to China without the required license.

4. Violation of 15 CFR 764.2(e) by Acting With Knowledge of a Violation

In Charge 4, BIS alleges Liao knew or had reason to know the DLVAs exported to China in Charge 3 required a license. Section 764.2(e) provides in part: a person may not buy, sell, dispose of, transfer, transport, or forward in whole or in part an item from the United States that is subject to the EAR with knowledge that a violation occurred, was about to occur, or was intended to occur. The testimony and exhibits herein, previously found Liao knowingly violated the regulations because he knew a license was required for exports. Further, Liao's previous business transactions with JFD, Menlo, and DBS Microwave discussed above, demonstrated his knowledge of export violations.

In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 CFR § 764.2(e) by acting with knowledge of a regulation violation.

5. Liao Aided or Abetted in the Release of United States—Origin Technology to Three Chinese Nationals in violation of 15 CFR § 764.2(b)

In Charge 5, BIS alleged on or about July 18, 1997, Liao issued invitation letters to three Chinese Nationals to visit the United States with knowledge that

[9] Mr. Yu was born in China and immigrated to the United States in 1976 and received a bachelor of science degree and masters degree in electrical engineering from the University of California, Los Angeles. (Tr. 108–109). While employed at Suntek, Mr. Yu allowed Chinese nationals to rent his apartment while they trained at Suntek. (Tr. 108; Gov't Ex. 19, 24). Currently, Mr. Yu is Vice President of Technology at Cernex, Inc., which manufactures microwave amplifiers with a frequency range exceeding 10.5 gigahertz for customers in China. (Tr. 110–112; Gov't Ex. 33).

Suntek would release United States—origin technology to them. Further, the release of technology in the United States to citizens of China constituted an export under 15 CFR 734.2(b) and a license was required.

BIS asserts Liao aided or abetted in the prohibited act of hearing United States technology to Chinese nationals. Section 762.2(b) provides, ''No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited for the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.''

Charlie Kuan, President of Suntek, explained one of the goals of Suntek was to bring Jeway employees to the United States to manufacture amplifiers and obtain technology associated with the amplifiers. (Tr. 75–89). During this time, Suntek had a very limited number of technicians; therefore, Suntek committed resources to bring Jeway employees to the United States to assist technicians with the manufacturing of amplifiers. (Tr. 76). In an effort to facilitate the arrival of Jeway employees. JFD organized travel, boarding, and visa applications.

JFD employee, Francis Chang, received a letter from Liao Guozi, General Manager for Jeway, providing instructions for obtaining visa applications for three Chinese nationals traveling to the United States for training at Suntek. (Gov't Ex. 17). Mr. Guozi advised Mr. Chang to avoid mentioning Suntek in the invitation letters in an effort ''to facilitate their visa applications and to protect Suntek''. (Gov't Ex. 17). Mr. Guozi communicated that Chairman Wang instructed JFD to invite three engineers from SIWI for training on imported products at AEMI Co. located in San Diego. After a couple of days at AEMI, the three engineers would then go to Suntek. (Gov't Ex. 17). The Three engineers listed in Mr. Guozi's letter were: Wang Yongan, Hu Changhong, and Qiu Yijie. (Gov't Ex. 17). The correspondence also informed Mr. Chang that the engineers would be at Suntek for three months and expenses would be borne by JFD. (Gov't Ex. 17, 22–25).

The instructions from Mr. Guozi were corroborated with witness testimony and documentation. (Gov't Ex. 9, 17, 19, 22–25). Mr. Kuan, President of Suntek, testified that bringing Jeway employees to Suntek for training was a ''company goal.'' (Tr. 75–76). JFD employee, Francis Chang, drafted a Letter of Invitation to Mr. Hu Changhong, Project Manager of SIWI dated July 18, 1997, The letter also invited Wang Yongan and Qiu Yijie to visit the United States for the purpose of receiving full installation training and perform quality inspection of microwave absorbers previously purchased from JFD. Although Francis Chang drafted the letter, Jennifer Zhong was listed as the signatory on behalf of JFD. (Tr. 124–129; Gov't Ex. 17). Liao approved the practice of invitations letters on JFD letterhead sent to foreign nationals. These letters were drafted by Mr. Chang and signed by Mr. Chang, Liao, or Jennifer Zhong. (Tr. 125–128; Gov't Ex. 18).

In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao released United States—origin technology to three Chinese nationals without a license as required by 15 CFR 734.2(b). Further, Liao aided and abetted the prohibited act of inviting Chinese nationals and releasing technology to them by sending invitation letters to SIWI employees in violation of 15 C.F.R. § 764.2(b).

VI. Sanction

BIS requested the maximum civil penalty permitted. $11,000.00 per violation. *See* 15 CFR 764.3(a)(1) and 15 CFR 6.4(a)(3)(2001). Further, BIS seeks denial of export privileges for a period of twenty (20) years under 15 CFR 764.3(a)(2)(2001) and exclusion from practice before BIS as described in 15 CFR 764.3(a)(3)(2001).

Several aggravating factors support the recommendation to order the maximum civil penalty, deny export privileges and exclude Liao from practice before BIS. Liao exported a restricted commodity without a license from the Department of Commerce. The seventy (70) amplifiers exported by Liao were controlled for national security reasons since they had dual-use capabilities serving the commercial industry or advancing military applications. Experts from the Department of Commerce explained the military applications of the amplifiers, Model SKA 1000, and associated technology could be used for radar, missile, radio, electronic warfare equipment, electronic countermeasure equipment, ESM, traveling wave tube replacement and simulators.

Mr. Kuan, President of Suntek, testified that bringing Jeway employees to the United States with the intent to acquire United States—origin amplifier technology was a company goal. Liao, initial shareholder and one of the founders of Suntek, aided and abetted in the release of United States-origin technology to Chinese controlled companies by issuing invitational letters to Chinese national. The purpose of the visits by Chinese nationals was to gain training and perform quality inspections of United States-origin amplifiers and associated technology.

Liao's employment history with Menlo and previous business transactions with JFD, DBS Microwave and Suntek, demonstrated his significant involvement with Model SKA 1000 amplifier exports. Furthermore, Liao facilitated the export of amplifiers to Chinese controlled companies through his company JFD. Coincidentally, another company, Prime Transportation Corporation, operated and controlled by Liao, provided payments for the amplifiers manufactured by Suntek. I find Liao individually, and doing business as JFD violated the EAA and EAR thus warranting the proposed civil penalty assessment by BIS, $55,000.00, appropriate.

So Ordered,

Done and dated this 5th day of April, 2004. Alameda, California.

Honorable Parlen L. McKenna,
Administrative Law Judge.

Attachment A Exhibit List

A. Government Exhibits

Gov't Ex. 1—Superseding Indictment of Silicon Telecom Industries, Inc. a/k/a JFD International, Suntek Microwave, Inc., Charlie Kuan, and Jason Liao
Gov't Ex. 2—License determination from Department of Commerce for Suntek DLVA model SKA–1000
Gov't Ex. 3—Letter from Charlie Kuan to Office of Export Enforcement dated February 3, 2000, regarding DLVA specifications and applications
Report of Investigative Activity telephone interview with Charlie Kuan dated February 3, 2000, regarding specifications for Model SKA 1000
Facsimile to Mr. Sheridan regarding Specifications SKA–1000 sent by Charlie Kuan
Gov't Ex. 4—Pre-Incorporation Agreement dated May 20, 1996, for Suntek Microwave. Inc.
Gov't Ex. 5—Contract between JFD International and SIWI Electronics Co.
Gov't Ex. 6—Report of Investigative Activity interview of Jason Liao dated December 2, 1997
Gov't Ex. 7—Chengdu JEWAY Microwave Communication Co. Ltd. Marketing brochure
Gov't Ex. 8—Chengdu SIWI Electronic Inc. marketing brochure
Gov't Ex. 9—Report of Investigative Activity interview of Charlie Kuan, dated March 2, 2000
Fax from JW, Wang Yongan to Suntek, Attention General Manager Kuan dated March 25, 2997
Fax from Wang Yuwen to General Manager Yu dated June 26, 1997

Fax from Liao Guozi to Charlie Kuan dated August 14, 1997
Fax from Charlie Kuan to Wang Lipei dated March 12, 1998
Gov't Ex. 10—License application for Suntek Microwave, Inc. dated March 4, 1997
Gov't Ex. 11—Letter from Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, to Charlie Kuan regarding notice of intent to deny license application
Bureau of Export Administration notice of denial of license application dated July 17, 1997
Gov't Ex. 12—Report of Investigative Activity interview of Jason Liao dated December 2, 1997
SVSIC Purchase Orders
Suntek Packing Lists
Suntek Invoices
JFD International Invoices
Letter from Charlie Kuan to Jason Liao regarding payment for DLVAs dated October 9, 1997
Prime Intrans Corporation checks
Report of Investigative Activity interview of Ling Wang, dated May 24, 2000
Gov't Ex. 13—Letter from Charlie Kuan to Jason Liao regarding employment termination dated May 15, 1997
Letter from Daniel C. Minutillo, Attorney for Suntek Microwave, Inc., to Bureau of Export Enforcement regarding Suntek's voluntary self disclosure dated June 10, 1997
Report of Investigative interviews of Charlie Kuan dated February 14, 2000
Gov't Ex. 14—William Yu Affidavit dated April 25, 2000
Report of Investigative Activity interviews of Charlie Kuan dated October 27, 1997 and February 14, 2000
Report of Investigative Activity interview of Melba Bauto dated February 17, 2000
Report of Investigative Activity interview of Russ Alm dated February 22, 2000
Report of Investigative Activity interview of Salim Kader dated February 1, 2000
Gov't Ex. 15—License determination for amplifier technology
Gov't Ex. 16—Licensing determinations for Models SKA–1002, 1004 and 1006
Gov't Ex. 17—Letter of Invitation from JFD International to SIWI employees, July 18, 1997
Fax from Francis Chang to Charlie Kuan dated August 25, 1997
Fax from Charlie Kuan to Liao Guozi/JW dated August 25, 1997
Fax from Liao Guozi to Charlie Kuan dated June 27, 1997
Gov't Ex. 18—Letters of Invitation to SIWI and Jeway employees from JFD International
Gov't Ex. 19—Contract between JFD and SIWI Electronics Co.
Report of Investigative Activity interview of Charlie Kuan dated April 25, 2000
Affidavit of William Yu dated April 25, 2000
Gov't Ex. 20—Two Suntek Microwave, Inc. checks payable to Yan Jian Gui; each in the amount of Nine Hundred dollars ($900.00)
Memorandum dated July 30, 1997, from Charlie Kuan to Jiangui Yan regarding use of time clock
Fax from Liao Guozi to Charlie Kuan dated August 14, 1997
Gov't Ex. 21—Invoice from JFD International to Suntek dated December 13, 1996, regarding fees for B–1 visa extensions
INS Notices of Action regarding Yong An Wang and An Lao Wang
Affidavits of Support made by Jason Liao on behalf of Yong An Wang
Gov't Ex. 22—Fax from Charlie Kuan to Liao Guozi/JW dated October 1, 1997
Gov't Ex. 23—Memorandum from Charlie Kuan to Jeway employees dated July 24, 1997, regarding telephone expenses
Suntek Microwave, Inc. check #1824 made payable to cash for September 1997 pocket money
Gov't Ex. 24—Living Expenses Check paid by Suntek
Gov't Ex. 25—Facsimile from Charlie Kuan to Liao Guozi/JW dated June 27, 1997
Gov't Ex. 26—Facsimile from Charlie Kuan to Liao Guozi/JEWAY dated February 1, 1997
Gov't Ex. 27—Export License obtained by JFD International for amplifiers manufactured by Menlo
Gov't Ex. 28—Memo from Jason Liao to Charlie Kuan dated January 27, 1997, regarding Liao's receipt of 70 units of SKA—1000 Amplifiers
Gov't Ex. 29—Facsimile from Charlie Kuan to Wang Libu and Liao Guozi dated December 23, 1996
Gov't Ex. 30—Memo from Jason Liao to Charlie Kuan and carbon copy to Bill Yu dated December 31, 1996 regarding results of DVLA after exported to China
Gov't Ex. 31—Memo from Charlie Kuan to Liao Guozi/JW dated April 7, 1998
Gov't Ex. 32—Stipulation and Proposed Order for Unsealing of Factual Stipulation in *U.S.* v. *Kuan,* CR No. 00–20308–JW
Plea Agreement in *U.S.* v. *Kuan,* CR 00–20308–JW
Gov't Ex. 33—Bill Yu, Vice President of Technology, Cernex, Inc. Business Card
Gov't Ex. 34—Agreement on Partnership of JFD International and Fictitious Business Name Statements
Gov't Ex. 35—Memo from Thomas Muir, Advanced Electromagnetics, Inc. to Francis Chang dated August 27, 1997 regarding absorber application training request
Gov't Ex. 36—DBS Microwave, Inc. Order Acknowledgement, Packing Slips and Invoices addressed to JFD International
Gov't Ex. 37—Bureau of Export Administration Charging letter to Jason Liao, individually, and doing business as JFD International dated December 5, 2001
Gov't Ex. 38—JFD International Invoice showing commission to Jason Liao

Attachment B Ruling on Bureau's Proposed Findings of Fact and Conclusions of Law

On December 15, 2003, the Administrative Law Docketing Center (ALJ Docketing Center) received Post-Hearing Submissions of the Bureau of Industry and Security for filing in the above-referenced matter. The pleading included enumerated paragraphs entitled Findings of Fact and Conclusions of Law in accordance with 15 CFR 766.17(a)(2). Rulings on the proposed findings are detailed below.

1. The DLVAs are controlled for export to China for national security reasons. Through documentary evidence and witness testimony, BIS showed that the DLVAs were controlled for export to China for national security reasons and that licenses would be required for their exports. *See* Gov't Exhibit 2 and testimony of John Verna, BIS licensing officer, October 21, 2003 Hearing Transcript (October 21 Tr.) at 20–31 and 33–35.

Ruling: Accepted and Incorporated

2. On or about December 9, 1996, and on or about January 27, 1997, Liao exported DLVAs from the United States to China without the required export licenses.[10] Specifically, Liao picked up the DLVAs from Suntek and exported them to China without licenses. *See e.g.* Gov't Exhibit 12, 28, and 32 (Plea Agreement of Charlie Kuan) at 4. According, Liao violated the EAR as specified in Charges 1 and 3 of the Charging Letter. *See* Gov't Exh. 37.

Ruling: Accepted and Incorporated

3. At the time of these exports, Liao knew that licenses were required for the exports. In 1995, Liao applied for and obtained a license to export controlled amplifiers to China. *See* Gov't Exhibit 27. These amplifiers were classified under the same ECCN number in 1996 (3A01A.b.4.a) as the DLVAs in this case and under 3A01.b.4.a. in 1997. *See id.* The amplifiers were manufactured by Menlo Industries and when Menlo sold the amplifiers to Liao for export, Menlo informed Liao of the licensing requirement. *See* Gov't Exh. 11. Also, in 1996 Liao bought amplifiers from DBS Microwave, inc. (DBS). The invoices clearly indicated that these amplifiers were classified under ECCN 3A01A and that licenses were required for export from the United States. *See* Gov't Exh. 36. Accordingly, Liao violated the EAR as specified in Charges 2 and 4 of the Charging Letter. *See* Gov't Exh. 37.

Ruling: Accepted and Incorporated

4. The DLVA technology was controlled for export to China. *See* Gov't Exh. 15. The release of DLVA technology in the United States to a foreign national is ''deemed'' to be an export to the foreign country. *See* 15 CFR 734.2(b)(2) and 734.2(b)(2)(ii) (1997).

Ruling: Accepted and Incorporated

5. Liao caused, aided and abetted or abetted the release of DLVA technology to Messrs. Hu Changhong, Wang Yongan, and Qiu Yijie, Chinese nationals, by Suntek. On or about July 18, 1997, Liao invited the Chinese nationals to the Unite[s] States. At the time Liao issued the invitation letter, he knew that they were citizens of China, not citizens or permanent resident aliens of the United States; that they were going to work at Suntek manufacturing DLVAs; and that Suntek would release controlled U.S.-origin DLVA technology the [sic] them.

[10] Because the DLVAs were hand-carried by Liao, there are not shipping documents. Therefore, BIS used the dates that Liao picked up the DLVAs from Suntek as the dates for export.

Ruling: Accepted and Incorporated

Certificate of Service

I hereby certify that I have served the foregoing *decision and order* to the following persons as indicated:

Mi-Yong, Kim, Esq., Senior Attorney, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, (by Federal Express (overnight delivery));

Jason Liao, In c/o Jennifer Zhong, 3370 Monroe Street, Santa Clara, CA 95051, (by Federal Express (overnight delivery)).

Done and dated this 5th day of April, 2004, Alameda, California.

Cindy J. Roberson,

Paralegal Specialist to the Hon. Parlen L. McKenna.

[FR Doc. 04–12181 Filed 5–27–04; 8:45 am]

BILLING CODE 3910–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 04–00001.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Gold Star Exporters Ltd. (''GOLD STAR''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (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. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2004).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to: patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

GOLD STAR may:

1. Establish sale prices, minimum sale prices, target sale prices and/or minimum target sale prices, and other terms of sale in Export Markets; for Products, Services, Technology Rights and/or licensing of Technology Rights;

2. Conduct marketing and distribution of Products, Services, Technology Rights, and Licensing in Export Markets. Collect the information on trade opportunities in the Export Markets and distribute such information to export clients, Suppliers, and export intermediaries;

3. Conduct promotion of Products, Services, Technology Rights and licensing;

4. Set quantities of Products, Services, Technology Rights, and licensing to be sold based on needs in the Export Markets and on information from in-country and domestic sources;

5. Allocate geographic areas or countries in Export Markets and/or customers in Export Markets among Suppliers, distributors and/or sales representatives for the sale and/or distribution of Products, Services, Technology Rights, and/or licensing;

6. Refuse to quote prices for Products, Services, Technology Rights and/or licensing to or for any customers in the Export Markets, or any countries or geographical areas in the Export Markets;

7. Enter into exclusive and non-exclusive agreements appointing one or more export intermediaries for the distribution of Products, Services, Technology Rights and licensing with price, quantity, territorial and/or customer restrictions as provided above;

8. Enter into exclusive and/or non-exclusive agreements for the export of Products, Services, Technology Rights and licensing with price, quantity, territorial and/or customer restrictions as provided above;

9. Allocate export orders among Suppliers;

10. Negotiate, enter into, and/or manage exclusive and non-exclusive licensing agreements for the export of Technology Rights;

11. Enter into contracts for exclusive non-exclusive shipping;

12. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors. Confidential data is private and owned by each party of a transaction;

13. GOLD STAR and its Suppliers and export intermediaries may exchange and discuss information on the following:

(a) Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products, Services, Technology Rights and licensing in the Export Markets, selling strategies for the Export Markets, contract and spot pricing in the Export Markets, projected demands in Export Markets for Products and Services; prices and availability of Products, Services, Technology Rights, and licensing from competitors for sale in the Export Markets, and specifications for Products, Services, Technology Rights, and licensing by customers in the Export Markets;

(b) Information about the price, quality, quantity, source, and delivery

dates of Products, Services, Technology Rights, and licensing available to export;

(c) Information about terms and conditions of contract for sale in the Export Markets to consider and/or bid on by GOLD STAR, and its Suppliers and export intermediaries;

(d) Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among Suppliers;

(e) Information about expenses specific to exporting to and within the Export Markets;

(f) Information about United States and foreign legislation and regulations, including federal marketing order programs affecting the Export Markets;

(g) Information about GOLD STAR export operations, including without limitation, sales and distribution networks established by GOLD STAR and prior export sales by GOLD STAR (including export price information); and

(h) Information about export customer credit terms and credit history.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, GOLD STAR will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that are not already generally available to the trade or public.

2. GOLD STAR will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definition

1. ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by the Certificate

This Certificate protects GOLD STAR and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits GOLD STAR from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to GOLD STAR by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of GOLD STAR (b) the legality of such business plans of GOLD STAR under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the ''Guidelines for the Issuance of Export Trade Certificate of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: May 17, 2004.

Dated: May 25, 2004.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 04–12143 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established by Secretary Donald L. Evans on April 7, 2004 to ensure regular communication between Government and the manufacturing sector. This will be the inaugural meeting of the Council and include discussion of the organization of the Council and the implementation of the *Manufacturing in America* report, released by the Department of Commerce in January. The Council shall also advise the Secretary on government policies and programs that affect United States manufacturing and provide a forum for discussing and proposing solutions to industry-related problems.

DATES: June 15, 2004.

Time: 2 p.m.

ADDRESSES: Latrobe, PA. (Location—TBD; Please contact the Manufacturing Council Secretariat at (202) 482–1369 or visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm* for the most up-to-date information.) This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than June 8, 2004, to The Manufacturing Council, Room 2015B, Washington, DC, 20230. Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 2015B, Washington, DC, 20230 (Phone: 202–482–4501).

Dated: May 25, 2004.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. 04–12204 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, June 15, 2004, from 8:30 a.m. until 5 p.m., Wednesday, June 16, 2004, from 8:30 a.m. until 5 p.m. and Thursday, June 17, 2004, from 8:30 a.m. until 1 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) and amended by the Federal Information Security Management Act of 2002 (P.L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/*.

DATES: The meeting will be held on June 15, 2004, from 8:30 a.m. until 5 p.m., June 16, 2004, from 8:30 a.m. until 5 p.m. and June 17, 2004 from 8:30 a.m. until 1 p.m.

ADDRESSES: The meeting will take place at the Hilton Hotel Washington, DC—North Gaithersburg, 620 Perry Parkway, Gaithersburg, Maryland.

Agenda

—Welcome and Overview
—Customer Relations Management (CRM) Activities Session
—Review of Report on Computer Security Division Funding
—Discussion of Federal IT Security Professional Credentials
—Working Session on Board's Work Plan for 2004 and Beyond
—Office of Management and Budget Cyber Security Update
—Agenda Development for September 2004 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 25 copies of written material were submitted for distribution to the Board and attendees no later than June 11, 2004. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: May 21, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–12184 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *http://www.nfpa.org.*

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the codes or standard.

At a later date, each NFPA Technical Committee will issue a report, which will include a copy of written proposals that have been received, and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Document-edition	Document title	Proposal closing date
NFPA 10–2002	Standard for Portable Fire Extinguishers	6/25/2004

Document-edition	Document title	Proposal closing date
NFPA 13–2002	Standard for the Installation of Sprinkler Systems	11/5/2004
NFPA 13D–2002	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.	11/5/2004
NFPA 13R–2002	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.	11/5/2004
NFPA 14–2003	''Standard for the Installation of Standpipe Private Hydrants and Hose Systems''	6/25/2004
NFPA 15–2001	Standard for Water Spray Fixed Systems for Fire Protection	11/29/2004
NFPA 20–2003	Standard for the Installation of Stationary Pumps for Fire Protection	12/31/2004
NFPA 24–2002	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	11/5/2004
NFPA 30B–2002	Code for the Manufacture and Storage of Aerosol Products	11/29/2004
NFPA 31–2001	Standard for the Installation of Oil-Burning Equipment	6/25/2004
NFPA 33–2003	Standard for Spray Application Using Flammable or Combustible Materials	11/29/2004
NFPA 34–2003	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids.	11/29/2004
NFPA 37–2002	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines.	6/25/2004
NFPA 40–2001	Standard for the Storage and Handling of Cellulose Nitrate Film	11/29/2004
NFPA 68–2002	Guide for Venting of Deflagrations	6/25/2004
NFPA 70B–2002	Recommended Practice for Electrical Equipment Maintenance	6/25/2004
NFPA 72–2002	National Fire Alarm Code®	11/5/2004
NFPA 79–2002	Electrical Standard for Industrial Machinery	6/25/2004
NFPA 85–2004	Boiler and Combustion Systems Hazards Code	5/27/2005
NFPA 97–2003	Standard Glossary of Terms Relating to Chimneys Vents and Heat-Producing Appliances.	6/25/2004
NFPA 150–2000	Standard on Fire Safety in Racetrack Stables	11/29/2004
NFPA 211–2003	''Standard for Chimneys Fireplaces Vents and Solid Fuel-Burning Appliances''	6/25/2004
NFPA 232–2000	Standard for the Protection of Records	6/25/2004
NFPA 289–P*	Standard Method of Fire Test for Room Fire Growth Contribution of Individual Fuel Packages.	6/25/2004
NFPA 291–2002	Recommended Practice for Fire Flow Testing and Marking of Hydrants	11/5/2004
NFPA 418–2001	Standard for Heliports	6/25/2004
NFPA 750–2003	Standard on Water Mist Fire Protection Systems	6/25/2004
NFPA 804–2001	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants.	6/25/2004
NFPA 901–2001	Standard Classifications for Incident Reporting and Fire Protection Data	6/25/2004
NFPA 1142–2001	Standard on Water Supplies for Suburban and Rural Fire Fighting	8/13/2004
NFPA 1401–2001	Recommended Practice for Fire Service Training Reports and Records	6/25/2004
NFPA 1405–2001	Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires	6/25/2004
NFPA 1500–2002	Standard on Fire Department Occupational Safety and Health Program	11/29/2004
NFPA 1582–2003	Standard on Comprehensive Occupational Medical Program for Fire Departments	11/29/2004
NFPA 1583–2000	Standard on Health-Related Fitness Programs for Fire Fighters	11/29/2004
NFPA 1901–2003	Standard for Automotive Fire Apparatus	3/31/2006
NFPA 1906–2001	Standard for Wildland Fire Apparatus	5/28/2004
NFPA 1911–2002	Standard for Service Tests of Fire Pump Systems on Fire Apparatus	4/1/2005
NFPA 1912–2001	Standard for Fire Apparatus Refurbishing	5/28/2004
NFPA 1914–2002	Standard for Testing Fire Department Aerial Devices	4/1/2005
NFPA 1915–2000	Standard for Fire Apparatus Preventative Maintenance Program	4/1/2005
NFPA 1982–1998	Standard on Personal Alert Safety Systems (PASS)	6/25/2004

* Proposed NEW drafts are available from NFPA's Web site—*http://www.NFPA.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, MA 02269.

Dated: May 21, 2004.

Hratch Semerjian,

Acting Director.

[FR Doc. 04–12185 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its November meeting or its May meeting, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2005 May meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Forty-three reports are published in the 2005 May Meeting Report on Proposals and will be available on July 30, 2004. Comments received on or before October 8, 2004, will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2005 May Meeting Report on Proposals is available and downloadable from NFPA's Web site—*http://www.nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon,

Massachusetts 02322. Comments on the report should be submitted to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's November meeting or at the May meeting each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 8, 2004, for the 2005 May Meeting Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2005 May Meeting Report on Comments by April 1, 2005, prior to the May meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the May meeting, May 22–26, 2004, in Indianapolis, Indiana, by NFPA members.

2005 May Meeting

REPORT ON PROPOSALS

(P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision)

NFPA 1	Uniform Fire Code™	P
NFPA 18	Standard on Wetting Agents	C
NFPA 52	Compressed Natural Gas (CNG) Vehicular Fuel Systems Code	C
NFPA 54	National Fuel Gas Code	P
NFPA 57	Liquefied Natural Gas (LNG) Vehicular Fuel Systems Code	W
NFPA 59A	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)	C
NFPA 73	Electrical Inspection Code for Existing Dwellings	C
NFPA 90A	Standard for the Installation of Air-Conditioning and Ventilating Systems	P
NFPA 90B	Standard for the Installation of Warm Air Heating and Air-Conditioning Systems	P
NFPA 92A	Recommended Practice for Smoke-Control Systems	C
NFPA 101	Life Safety Code®	P
NFPA 160	Standard for Flame Effects Before an Audience	C
NFPA 170	Standard for Fire Safety Symbols	P
NFPA 203	Guide on Roof Coverings and Roof Deck Constructions	W
NFPA 220	Standard on Types of Building Construction	P
NFPA 221	Standard for Fire Walls and Fire Barrier Walls	C
NFPA 230	Standard for the Fire Protection of Storage	W
NFPA 251	Standard Methods of Tests of Fire Endurance of Building Construction and Materials	C
NFPA 253	Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source	C
NFPA 255	Standard Method of Test of Surface Burning Characteristics of Building Materials	C
NFPA 269	Standard Test Method for Developing Toxic Potency Data for Use in Fire Hazard Modeling	W
NFPA 285	Standard Method of Test for the Evaluation of Flammability Characteristics of Exterior Non-Load-Bearing Wall Assemblies Containing Combustible Components Using the Intermediate-Scale, Multistory Test Apparatus.	C
NFPA 286	Standard Methods of Fire Tests for Evaluating Contribution of Wall and Ceiling Interior Finish to Room Fire Growth	C
NFPA 303	Fire Protection Standard for Marinas and Boatyards	C
NFPA 307	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves	C
NFPA 312	Standard for Fire Protection of Vessels During Construction, Repair, and Lay-Up	C
NFPA 318	Standard for the Protection of Semiconductor Fabrication Facilities	P
NFPA 484	Standard for Combustible Metals, Metal Powders, and Metal Dusts	P
NFPA 495	Explosive Materials Code	C
NFPA 498	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	C
NFPA 505	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation.	P
NFPA 654	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids.	C
NFPA 703	Standard for Fire Retardant Impregnated Wood and Fire Retardant Coatings for Building Materials	C
NFPA 730	Guide for Premises Security	N
NFPA 731	Standard for the Installation of Electronic Premises Security Systems	N
NFPA 1000	Standard for Fire Service Professional Qualifications Accreditation and Certification Systems	C
NFPA 1071	Standard for Emergency Vehicle Technician Professional Qualifications	C
NFPA 1123	Code for Fireworks Display	C
NFPA 1124	Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles	C
NFPA 1126	Standard for the Use of Pyrotechnics before a Proximate Audience	C
NFPA 1145	Guide for the Use of Class A Foams in Manual Structural Fire Fighting	C
NFPA 2010	Standard on Aerosol Fire Extinguishing Systems	N
NFPA 5000	Building Construction and Safety Code™	P

Dated: May 21, 2004.

Hratch Semerjian,

Acting Director.

[FR Doc. 04–12186 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052404C]

New England Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings on Amendment 2 to the Monkfish Fishery Management Plan; request for comments.

SUMMARY: The monkfish fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils). The Councils will hold a series of public hearings to solicit comments on proposals to be included in Amendment 2 to the Monkfish Fishery Management Plan (FMP).

DATES: Written comments on the proposals will be accepted through July 28, 2004. The public hearings will begin Tuesday, June 15, 2004, and end on June 24, 2004. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations.

ADDRESSES: To obtain copies of the public hearing document or to submit paper, disk, or CD-ROM comments, contact Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Written comments should be marked as ''Comment on Monkfish Amendment 2.'' Comments may also be sent via facsimile (fax) to (978) 465–0492. The Councils will take scoping comments at six public meetings to be held in New York, New Jersey, North Carolina, Massachusetts and Maine. For specific locations, see **SUPPLEMENTARY INFORMATION**. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Councils propose to take action to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act of 1996, as well as a number of issues concerning the management of the monkfish fishery identified in public scoping. The Councils will consider comments from fishermen, interested parties, and the general public on the proposals and alternatives described in the public hearing document for Amendment 2 to the Monkfish FMP. Once the Councils have considered public comments, they will approve final management measures and prepare a submission package for formal submission to NMFS for Secretarial review. There will be additional opportunities for public comment for Amendment 2. A Notice of Availability (NOA) for the Draft Supplemental Environmental Impact Statement (DSEIS) was published in the **Federal Register** on April 30, 2004, announcing the availability of the DSEIS for comment. Comments on the DSEIS must be received by the New England Council by July 28, 2004. In addition, an NOA and a proposed rule for Amendment 2 will be published in the **Federal Register** for comment at a later date.

The goals of Amendment 2 are to: (1) Prevent overfishing and rebuild overfished stocks as necessary; (2) address problems created by implementation of the FMP; (3) promote improved data collection and research on monkfish; (4) comply with the Council on Environmental Quality Guidelines to update environmental documents; (5) address deficiencies in meeting Magnuson-Stevens Act requirements; (6) address protected species/fishery interactions; and (7) reduce FMP complexity where possible. The Councils are considering a wide range of possible actions, including alternatives that would: modify the days-at-sea (DAS) management program; adjust the monkfish incidental catch limit in several fisheries; increase the minimum mesh size and configuration of monkfish trawl nets; change or eliminate the minimum fish size; establish an offshore monkfish fishery program; modify the limited access permit qualification criteria for vessels fishing in the southernmost range of the fishery; minimize the fishery impacts on essential fish habitat and deep-sea coral areas; establish DAS incentives for vessels engaging in cooperative research; create a monkfish trawl experimental fishery in the Gulf of Maine; modify the framework adjustment procedure to enable the Councils to take action under the procedure to minimize fishery interaction with protected species and require bycatch reduction devices at a future time through abbreviated rulemaking; exempt vessels fishing outside of the EEZ from the FMP regulations; and clarify the vessel permit upgrading baseline conditions. The Councils will consider all comments received on these proposals until the end of the comment period on July 28, 2004.

Meeting Dates, Times, and Locations

The Councils will discuss and take scoping comments at public meetings as follows:

Tuesday, June 15, 2004 at 6 p.m. – Inn at East Wind, 5720 Route 25A, Wading River, NY 11792; telephone: (631) 929–3500

Wednesday, June 16, 2004 at 6 p.m. – Ramada Inn Toms River, 2373 Route 9, Toms River, NJ 08755; telephone: (732) 905–2626

Thursday, June 17, 2004 at 7 p.m. – Roanoke Island Festival Park, 1 Festival Park, Manteo, NC 27954; telephone: (252) 475–1500

Tuesday, June 22, 2004 at 6 p.m. – Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281

Wednesday, June 23, 2004 at 6 p.m. – Holiday Inn, Peabody, One Newbury St., Route 1 North, MA, 01960; (978) 535–4600

Thursday, June 24, 2004 at 7 p.m. – DoubleTree Hotel, 1230 Congress Street, Portland, ME, 04102; (207) 774–5611.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

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

Dated: May 25, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1223 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051904B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Oversight Committee with Atlantic States Marine Fishery Service Herring Section. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, June 15, 2004 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review updated stock and fishery information for the 2003 fishing year. They will also review Herring Plan Development Team (PDT) and Atlantic States Marine Fisheries Commission (ASMFC) Technical Committee (TC) recommendations regarding herring specifications for the 2005 fishing year and develop Committee/Section recommendations regarding specifications for the 2005 fishing year and identify a range of options for Total Allowable Catches (TACs) to be further analyzed by the PDT/TC. The committee will receive an update on the development of Amendment 1 to the Herring Fishery Management Plan (FMP). The ASMFC Section will review and approve the ASMFC Herring FMP Review for 2003.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 25, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1225 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052504A]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet June 13–18, 2004. The Council meeting will begin on Tuesday, June 15, 2004, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held mid-day on Tuesday, June 15, 2004, to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings and hearing will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone 650–570–5700.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order.

A. Call to Order

1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Administrative Matters

1. Approval of Council Meeting Minutes
2. Council Communication Plan—Phase I (Communication During Council Session)
3. Update of Council Operating Procedures
4. Legislative Matters
5. Fiscal Matters
6. Appointments to Advisory Bodies, Standing Committees, and Other Forums
7. Workload Priorities and Draft September 2004 Council Meeting Agenda

C. Groundfish Management

1. Initial Consideration of Status of Fisheries and Inseason Adjustments (If Necessary)
2. NMFS Report
3. Final Consideration of 2004 Inseason Adjustments
4. Groundfish Essential Fish Habitat Environmental Impact Statement (EIS) Analytical Framework—Fishing Gear Impact Model Component.
5. Preliminary Consideration of Exempted Fishing Permit Applications for 2005–06
6. Monitoring Program Alternatives for the Shore-based Pacific Whiting Fishery
7. Update on Trawl Individual Quota Program
8. Adoption of 2005–2006 Groundfish Management Measures

D. Enforcement Issues

1. Preliminary Report on Contact to Violation Ratio in Groundfish Recreational Fisheries

E. Habitat

1. Current Habitat Issues

F. Coastal Pelagic Species Management

1. NMFS Report
2. Pacific Mackerel Harvest Guideline for 2004/2005 Season
3. Fishery Management Plan Amendment—Sardine Allocation

G. Marine Protected Areas

1. Federal Waters Portion of the Channel Islands National Marine Sanctuary Schedule Update
2. Scientific and Statistical Committee Review of Marine Reserves Issues
3. Update on Miscellaneous Marine Protected Area Activities
4. Monterey Bay National Marine Sanctuary Krill Harvest Ban Proposal

Schedule of Ancillary Meetings

Sunday, June 13, 2004

Scoping Session on Dedicated Access Privilege EIS—3 p.m.

Monday, June 14, 2004

Council Secretariat—8 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Scientific and Statistical Committee—8 a.m.

Habitat Committee—9 a.m.

Essential Fish Habitat Environmental Impact Statement—Joint Session—9:30 a.m.

Legislative Committee—11 a.m.

Budget Committee—2 p.m.

Enforcement Consultants—4 p.m.

Tuesday, June 15, 2004

Council Secretariat—7 a.m.

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Scientific and Statistical Committee—8 a.m.

Enforcement Consultants—As necessary.

Wednesday, June 16, 2004

Council Secretariat—7 a.m.

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Enforcement Consultants—As necessary.

Thursday, June 17, 2004

Council Secretariat—7 a.m.

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Enforcement Consultants—As necessary.

Friday, June 18, 2004

Council Secretariat—7 a.m.

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Groundfish Advisory Subpanel—As necessary.

Groundfish Management Team—8 a.m.

Enforcement Consultants—As necessary.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: May 25, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1224 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051904C]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of the Council's Mackerel Committee and the Gulf of Mexico Fishery Management Council's Mackerel Committee, a joint meeting of the South Atlantic Council's Mackerel Committee and Mackerel Advisory Panel, and meetings of its Mackerel Committee, Scientific and Statistical Committee, Advisory Panel Selection Committee, Standard Operating Policy and Procedure (SOPPs) Committee, Shrimp Committee and Ecosystem-Based Management Committee. In addition, there will be a meeting of the full Council.

DATES: The meetings will be held in June 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Pier House, 1 Duval Street, Key West, FL 33040; telephone: (1–800) 327–8340 or (305) 296–4600, fax: 305/296–7569.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC–10; fax: 843–769–4520; e-mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *Joint South Atlantic and Gulf Mackerel Committees Meeting:* June 14, 2004, 9 a.m. until 5 p.m. and June 15, 2004, 8:30 a.m. until 5:30 p.m.

There will be a joint meeting of the South Atlantic and Gulf Mackerel Committees to review public comment on Amendment 15 to the Coastal Migratory Pelagics Fishery Management Plan regarding the current mackerel permit moratorium. Each committee will develop recommendations for Amendment 15 for public hearing. The Committees will also receive presentations regarding the Southeast Data, Assessment and Review (SEDAR) stock assessment process for mackerel, including reviews by the Scientific and Statistical Committees from each council, and discuss recommendations. During the joint meeting, the committees will also review items to be included in Amendment 16 and make recommendations to staff for amendment development.

2. *Joint Mackerel Committee and Advisory Panel Meeting:* June 16, 2004, 8:30 a.m. until 4 p.m.

There will be a joint meeting of the South Atlantic Council's Mackerel Committee and Advisory Panel to review Amendment 15 (permit moratorium), mackerel SEDAR stock assessment results and Amendment 16. The Advisory Panel will develop recommendations for the Committee to consider for each agenda item and the Committee will then finalize its recommendations for the full Council. In addition, the meeting participants will receive an update on the status of bycatch data collection and analysis and an overview on the Council's current efforts regarding ecosystem-based management.

3. *South Atlantic Mackerel Committee Meeting:* June 17, 2004, 8:30 a.m. until 10:30 a.m.

The Mackerel Committee will discuss and consider any additional committee action needed for Amendment 15 (permit moratorium) and Amendment 16 to the Coastal Migratory Pelagics FMP.

4. *Scientific and Statistical Selection Committee Meeting (Closed Session):* June 17, 2004, 10:30 a.m. until 12 noon.

The Scientific and Statistical Selection Committee will discuss the role and structure of the SSC, review current membership, develop

recommendations for new appointments, and develop recommendations for new sub-committees.

5. *Advisory Panel Selection Committee Meeting (Closed Session):* June 17, 2004, 1:30 p.m. until 3:30 p.m.

The Advisory Panel Selection Committee will meet to review applications for open seats on the Council's advisory panels and develop recommendations for appointments.

6. *SOPPs Committee Meeting:* June 17, 2004, 3:30 p.m. until 5:30 p.m.

The SOPPs Committee will meet to review Standard Operating Policy and Procedures and develop recommendations for modification as needed.

7. *Shrimp Committee Meeting:* June 18, 2004, 8:30 a.m. until 12 noon.

The Shrimp Committee will receive an update on the status of the Shrimp Business Plan from NOAA Fisheries. The Committee will also review Amendment 6 to the Shrimp FMP involving federal shrimp permits and approve the document for public hearing.

8. *Ecosystem-Based Management Committee Meeting:* June 18, 2004, 1:30 p.m. until 5 p.m.

The Ecosystem-Based Management Committee will receive presentations on the status of the South Atlantic Council's work regarding ecosystem-based management, the South Atlantic ecopath model, the Chesapeake Bay Ecopath Model, and the Cooperative Internet Mapping Server and Essential Fish Habitat (EFH)/Ecosystem Homepage. The Committee will also review and discuss a draft action plan and provide direction and recommendations for future Committee and staff work.

9. *Demonstration of Ecosystem Computer Models, Servers and Homepage:* June 18, 2004, 5:30 p.m. until 7 p.m.

There will be an open meeting to view a demonstration of the ecosystem computer models, internet map servers and the EFH/Ecosystem homepage.

10. *Council Session:* June 19, 2004, 8:30 a.m. until 4 p.m.

From 8:30 a.m.–8:45 a.m., the Council will call the meeting to order, make introductions and roll call, and adopt the meeting agenda.

From 8:45 a.m.–9:45 a.m., the Council will hear a report from the Mackerel Committee and approve Amendment 15 for public hearing, consider recommendations on Mackerel SEDAR and take action as appropriate, and consider recommendations on Amendment 16 and take action as appropriate.

From 9:45 a.m.–10 a.m., the Council will hear a report from the SSC Committee, consider Committee recommendations and take action to appoint members if necessary.

From 10 a.m.–10:30 a.m., the Council will hear a report from the Advisory Panel Selection Committee and take action to appoint members to the advisory panels.

From 10:30 a.m.–11 a.m., the Council will hear a report from the SOPPs Committee and modify the SOPPs as appropriate.

From 11 a.m.–11:30 a.m., the Council will hear a report from the Shrimp Committee, consider recommendations, and approve Amendment 6 to the Shrimp FMP for public hearing.

From 11:30 a.m. until 12 noon, the Council will hear a report from the Ecosystem-Based Management Committee.

From 1:30 p.m.–2 p.m., the Council will receive an update from the Information and Education Committee.

From 2 p.m.–2:30 p.m., the Council will hear a presentation on the Southeast Aquatic Resources Partnership (SARP) and discuss action to sign the SARP Memorandum of Understanding.

From 2:30 p.m.–3 p.m., the Council will hear a presentation regarding Snapper/Grouper management issues and take action as appropriate.

From 3 p.m.–3:30 p.m., the Council will hear status reports from NOAA Fisheries.

From 3:30 p.m.–4 p.m., the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 11, 2004.

Dated: May 25, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1226 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043004B]

Sea Turtle Conservation; Activities Related to Fishing

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

ACTION: Notice of availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability of a draft information framework and draft criteria for evaluating gear with regard to the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy). The Strategy is a plan to analyze sea turtle bycatch across gear types because certain types of gear are more prone to capturing turtles than others, depending on the way the gear is fished and the time and area within which it is fished. The information framework and evaluation criteria will lay the foundation for actions under the Strategy and the development of conservation measures.

DATES: Written comments on the information framework and evaluation criteria provided within this notice, or other information that NMFS should consider, are requested on or before June 28, 2004.

ADDRESSES: Comments should be sent to: Chief, Endangered Species Division, Office of Protected Resources, NMFS 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments on this action is *PR3.Strategy@noaa.gov* Include in the subject line of the e-mail comment the following document identifier: 043004. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. References used in this document may be obtained by

writing to this address or by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*) and green (*Chelonia mydas*) turtles are listed as threatened, except for Mexican breeding olive ridleys and populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles--even incidentally--is prohibited, with exceptions identified in 50 CFR 223.206. Reduction of the incidental capture of sea turtles as a result of fishery operations has been identified as a priority task in all (ESA) sea turtle recovery plans for the Atlantic, Gulf of Mexico, and Caribbean.

On July 31, 2001, NMFS announced its intent to prepare an EIS to assess the potential impacts on the human environment of sea turtle interactions with fishing activities in the Atlantic and Gulf of Mexico as specified under the Strategy (66 FR 39474). NMFS received 10 comments on the Strategy.

Most commenters expressed support for the Strategy and asked to be included in the process. They felt that a gear-based approach to reducing sea turtle interactions in fisheries would address the issue of cumulative impacts resulting from various fisheries. However, four main areas of concern were expressed and are responded to below.

Comment 1: Several commenters felt the Strategy should include the Pacific and Caribbean fisheries.

Response: NMFS agrees that sea turtle interactions with fisheries in these regions are also of significant concern. However, given limited staff and funding resources, NMFS felt that focusing on the diverse fisheries operating in the Atlantic and Gulf of Mexico area was an appropriate first step to evaluating the efficacy of a gear-based approach. NMFS also felt that many of the priority fisheries in the Pacific, such as longline and drift gillnets, were being addressed through the ESA and Magnuson Stevens Fishery and Conservation Act (Magnuson-Stevens Act) regulations (66 FR 44549, August 24, 2001; 68 FR 69962, December 16, 2003; 69 FR 11540, March 11, 2004; 69 FR 17329, April 2, 2004). In addition, the State of Hawaii developed a conservation plan and submitted an application for an ESA section 10(a)(1)(B) incidental take permit that will address sea turtle interactions in their managed fisheries (67 FR 31172, May 9, 2002).

NMFS will continue to use its authority to address interactions with sea turtles in the Pacific and Carribean fisheries not identified in the Strategy.

Comment 2: Several commenters felt that non-fishery impacts should be evaluated and included in the Strategy or similar strategies should be prepared for these threats.

Response: NMFS attempts to consider all of the impacts to sea turtles cumulatively and to reduce threats from all known sources. Threats from non-fishery sources are identified in the joint NMFS and U.S. Fish and Wildlife Service (USFWS) ESA recovery plans completed for listed sea turtles occurring in the Atlantic and Gulf of Mexico. These recovery plans describe threats from all sources and prioritize conservation measures to remove or reduce such threats. As such, NMFS and USFWS work with other Federal agencies, states, private individuals and other entities to minimize the impacts to sea turtles from non-fishery activities (e.g., nesting habitat degradation, marine debris, dredging, power plant impingement). Nevertheless, fishing activities have been recognized as one of the most significant threats to sea turtle survival (Magnuson *et al.*, 1990, Turtle Expert Working Group 2000). To respond to these threats, NMFS necessarily limited the Strategy to a comprehensive evaluation of the impacts of fishing gear types on sea turtles throughout the U.S. Atlantic Ocean and Gulf of Mexico.

Comment 3: Several commenters identified fishery actions that should be considered as a priority under the Strategy. These actions included implementing larger Turtle Excluder Devices (TEDs) in trawl fisheries, restricting leaders in the Chesapeake Bay pound net fishery, prohibiting large mesh gillnets and placing observers on Mid-Atlantic gillnet fisheries, and considering fishery closures to adequately address incidental take of sea turtles.

Response: NMFS has addressed several of the high priority fisheries identified. In 2003, NMFS issued a rule requiring larger TEDs in shrimp trawls(68 FR 8456) and a rule prohibiting gillnets greater than 8–inch(20.32–cm) stretched mesh in the Mid-Atlantic (67 FR 71895). In 2002, NMFS issued rules prohibiting the use of gillnets with a stretched mesh greater than 4.25 inches (10.80 cm) in Pamlico Sound (67 FR 56913) and prohibiting pound net leaders with mesh size greater than 12–inches (30.48–cm) stretched mesh and stringers in the Chesapeake Bay (67 FR 41196). In addition, NMFS has an active program for observing mid-Atlantic gillnets with approximately 800 sea-days conducted each year.

Comment 4: Several commenters expressed concern that the notice of intent to prepare an EIS lacked specific information on what actions were being proposed.

Response: NMFS agrees that the 2001 notice of intent to prepare an EIS (66 FR 39474) lacked specific information on what actions may be proposed. The 2001 notice was to provide the public with an opportunity to comment on the Strategy and to alert them that an EIS would be prepared for any decision making with regard to proposed actions to reduce sea turtle interactions in fisheries. In order to begin identifying various alternatives to be considered through an EIS, NMFS must gather and evaluate comprehensive information on gear types, fisheries practices, sea turtle bycatch, and existing management regulations. To that end, NMFS has prepared a draft information framework relevant to the Strategy and developed draft criteria for evaluating gear types under the Strategy.

Draft information framework and draft criteria for evaluating gear and fisheries

The purpose of this notice is to alert the interested public of the continuation of the Strategy scoping process and to allow the public an opportunity to review and comment on the information framework (Tables 1 and 2) and evaluation criteria. These three tables are designed to complement each other and provide the framework for a comprehensive evaluation of recreational and commercial fisheries in the Atlantic Ocean and Gulf of Mexico and their effects on sea turtles. NMFS is taking a stepped approach to implementing the Strategy, beginning with compiling and organizing information to characterize fisheries and sea turtle bycatch across gear types.

Table 1 provides a comprehensive list of gears used in the Atlantic Ocean and Gulf of Mexico in both state and Federal waters and commercial and recreational fisheries. Gear types are provided at the category, gear, and sub-gear levels to

provide refinement in determining gear interactions with sea turtles. NMFS recognizes that gear may be more or less likely to interact with sea turtles depending on the way it is fished and the target species, so information on gear will be organized and evaluated at the most detailed level possible. When making comments on Table 1, please consider the following questions: Are all gear types used in the Atlantic Ocean and Gulf of Mexico represented in this table? Is this the best way to represent the gear categories? Would another approach be better?

TABLE 1 - LIST OF GEARS USED IN THE ATLANTIC OCEAN AND GULF OF MEXICO FISHERIES.

Category	Gear	Sub-Gear
Trawls	Beam Trawls	Beam Trawls, Fish.
		Beam Trawls, Other - Shrimp, chopsticks.
	Otter Trawls	Otter Trawl Bottom, Crab.
		Otter Trawl Bottom, Fish.
		Otter Trawl Bottom, Lobster.
		Otter Trawl Bottom, Scallop.
		Otter Trawl Bottom, Shrimp.
		Otter Trawl Bottom, Other.
		Otter Trawl Midwater Butterfly Nets.
	Other Trawls	Trawl, Clam Kicking.
		Trawl Midwater, Paired.
		Trawl Bottom, Paired.
		Trawl, Roller.
		Trawl, Roller Frame.
		Trawl, Skimmer.
		Scottish Seine.
		Butterfly Nets.
		Danish Seine.
		Whelk Trawls.
		Jellyfish Trawls.
		Fly Net.
Seines	Haul Seines	.
	Other Seines	Stop Seine.
		Common Seine.
		Swipe Seine.
		Long Haul Seine.
Purse Seines	Purse Seine	Purse Seine, Tarp.
	Lampara/Ring Nets	.
Gillnets	Gillnets	Gillnets, Floating Drift.
		Gillnets, Sink Drift.
		Gillnets, Floating Anchor.
		Gillnets, Sink Anchor.
		Gillnets, Runaround.
		Gillnets, Stake.
		Gillnets, other.
	Trammel Nets	Trammel Nets, Floating Drift.
		Trammel Nets, Sink Drift.
		Trammel Nets, Floating Anchor.
		Trammel Nets, Sink Anchor.
		Trammel Nets, Runaround.
		Trammel Nets, Other.
Pots and Traps	Pots and Traps	Pots and Traps, Conch.
		Pots and Traps, Blue Crab.
		Pots and Traps, Crab, Peeler.
		Pots and Traps, Crayfish.
		Pots and Traps, Eel.
		Pots and Traps, Fish.
		Pots and Traps, Spiny Lobster.
		Pots and Traps, Octopus.
		Pots and Traps, Periwinkle or Conkle.
		Pots and Traps, Shrimp.
		Pots and Traps, Turtle.
		Pots and Traps, Stone Crab.
		Pots and Traps, Scup.
		Pots and Traps, Black Sea Bass.
		Pots and Traps, Reef Fish.
		Pots and Traps, Hagfish.
		Pots and Traps, Golden Crab.
		Pots and Traps, Puffer.
	Pots & Traps, Lobster	Pots and Traps, Lobster Inshore.
		Pots and Traps, Lobster Offshore.
		Pots and Traps, Lobster Double Parlor.
	Pots & Traps, Other	Pots, Unclassified.

TABLE 1 - LIST OF GEARS USED IN THE ATLANTIC OCEAN AND GULF OF MEXICO FISHERIES.—Continued

Category	Gear	Sub-Gear
.....	.....	Box Traps.
.....	.....	Wire Baskets.
.....	.....	Slat Traps (Virginia).
Dredge	Dredge	Dredge, Hydraulic, Clam.
.....	.....	Dredge, Hydraulic Escalator, Clam.
.....	.....	Dredge, Clam.
.....	.....	Dredge, New Bedford/ Sea Scallop.
.....	.....	Dredge, Digby.
.....	.....	Dredge, inshore/bay.
.....	.....	Dredge, Oyster.
Fixed Nets	Pound Nets	.
.....	Fyke Nets	.
.....	Fixed Nets, Other	Weirs.
.....	.....	Trap Nets.
.....	.....	Floating Traps (Shallow).
.....	.....	Bag Nets.
.....	.....	Channel Nets.
.....	.....	Stop Nets.
Hand Nets	Dip Nets	Cast Nets.
.....	.....	Bully Nets.
.....	.....	Snares.
Longlines	Longlines	Longlines, Vertical.
.....	.....	Longlines, Surface.
.....	.....	Longlines, Bottom.
.....	.....	Longlines, Surface, Midwater.
.....	.....	Longlines, Trot.
.....	.....	Longlines, Turtle Hooks.
.....	.....	Longlines, Drift with Hooks.
Hook and Line	Hook and Line	Hook and Line, Manual.
.....	.....	Hook and Line, Electric.
.....	.....	Electric/Hydraulic, Bandit Reels.
.....	Troll Lines	Troll Line, Manual.
.....	.....	Troll Line, Electric.
.....	.....	Troll Line, Hydraulic.
Hand Line	Hand Line	Troll and Hand Lines.
.....	.....	Hand Lines, Auto Jig.
Rakes, Hoes, and Tongs	.....	.
Spears and Gigs	.....	.
By Hand	.....	.
Other Gears	Other Gears	Unspecified Gear.
.....	.....	Combined Gears.
.....	.....	Chemical.

Table 2 is a fisheries characterization, bycatch, and regulations information framework and outlines the type of information that will be compiled at the sub-gear level or gear level for each gear type used in each fishery. This approach will aid in evaluating the impact of fisheries, by gear types, on sea turtles. When commenting on Table 2, please consider the following questions: Is there additional information that should be considered to better understand gear interactions with sea turtles? Is this list too detailed and, if so, what should be deleted and why? Is evaluating impacts across gear types the best way to analyze bycatch impacts on sea turtles?

TABLE 2 - FISHERIES CHARACTERIZATION, BYCATCH, AND REGULATIONS INFORMATION FRAMEWORK

Category	Information
Fishery characterization (across gear types)	Is this gear type used in state or Federal waters, or both?.
.....	What is the geographic scope of this fishery?.
.....	Is there a management plan in place? What is the name of the management plan?.
.....	Are there permit requirements in this fishery and, if so, what are they?.
.....	How many people hold a permit to participate in this fishery?.
.....	How many permitted vessels are in this fishery?.
.....	How many active vessels are in this fishery?.
.....	What is the level of this gear use by vessels in this fishery (e.g., number of pots or pound nets)?.
.....	What are the landings in this fishery?.
.....	Which areas have the highest levels of landings?.
.....	What is the effort in this fishery (e.g., days at sea or number of trips per month)?.
.....	Which areas have the highest effort?.
.....	When does this fishery occur, i.e., time of year?.
.....	What is the peak season or months for this fishery?.

TABLE 2 - FISHERIES CHARACTERIZATION, BYCATCH, AND REGULATIONS INFORMATION FRAMEWORK—Continued

Category	Information
.....	Is there a particular time of day that this fishery is prosecuted?.
.....	How is the gear used in fishing (e.g., the range and average soak times, the depth the net is set for fishing)?.
.....	What are the specifics of the gear used in this fishery (e.g., mesh size, pot configuration)?.
Bycatch	Has this gear type, within this fishery, been observed for sea turtle bycatch?.
.....	How many trips have been observed (e.g., what percentage of the total number of trips have been observed)?.
.....	During which seasons or months and years have vessels in this fishery been observed?.
.....	Has sea turtle bycatch been documented?.
.....	If yes, which species?.
.....	What are the observed lethal and non-lethal takes by season/month and year of observer coverage?.
.....	Is there an estimation of lethal and non-lethal takes for this fishery? What is the coefficient of variation of the estimation?.
Regulations	Are there regulations under the Endangered Species Act for sea turtles that apply to this fishery?.
.....	Are there regulations under the Marine Mammal Protection Act that apply to this fishery that may affect sea turtles?.
.....	Are there regulations under the Magnuson-Stevens Act that apply to this fishery that may affect sea turtles?.
.....	Are there state regulations that apply to this fishery that may affect sea turtles?.

The following lists criteria for evaluating gear types based upon documented or expected impact to sea turtles. These criteria will be applied to the information collected in table 2 to evaluate which fisheries or gear are of greatest concern and need to be considered first in actions under the Strategy. When commenting on the criteria list, please consider the following questions: Are the criteria appropriate for evaluating gear types relative to sea turtle bycatch? Would another approach be better? Are the criteria clear and objective? What other information should be added to improve this evaluation criteria?

Criteria for evaluating gear types

Characteristics of gear types that would be considered first priority relative to evaluating sea turtle bycatch:

•Widespread use of gear in areas with sea turtles
•Known/documented gear interactions with sea turtles are frequent
•Expected gear interactions with sea turtles are frequent
•Known/documented rate of sea turtle mortalities from gear interactions are high
•Expected rate of sea turtle mortalities from gear interactions are high
•Lack of effective management measures that benefit sea turtles

Characteristics of gear types that would be considered second priority relative to evaluating sea turtle bycatch:

•Moderate use of gear in areas with sea turtles
•Known/documented gear interactions with sea turtles are moderate in frequency
•Expected gear interactions with sea turtles are moderate in frequency
•Known/documented rate of sea turtle mortalities from gear interactions are moderate
•Expected rate of sea turtle mortalities from gear interactions are moderate
•Lack of effective management measures for sea turtles

Characteristics of gear types that would be considered third priority relative to evaluating sea turtle bycatch:

•Minimal use of gear in areas with sea turtles
•Known/documented gear interactions with sea turtles are rare
•Expected gear interactions with sea turtles are rare
•Known/documented rate of sea turtle mortalities from gear interactions are low
•Expected rate of sea turtle mortalities from gear interactions are low
•Effective management measures for sea turtles are in place

NMFS is continuing to seek input from the fishing industry, sea turtle experts, non-governmental organizations, academia, state representatives, and the public on a strategic approach to evaluate and reduce sea turtle interactions in the Atlantic Ocean and Gulf of Mexico fisheries. NMFS is requesting comments on the draft information framework and draft evaluation criteria and is seeking recommendations for additional analysis. Public involvement is critical to the successful implementation of the Strategy goals and will be sought in the development of conservation measures. Public meetings will be announced in a subsequent **Federal Register** notice and draft documents will be made available to the public for comment.

Dated: May 21, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–12169 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Commercial Availability Provision of the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

May 24, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (The Committee).

ACTION: Designation.

SUMMARY: The Committee has determined that certain combed compact yarns, of wool or fine animal hair, classified in subheadings 5107.10, 5107.20, or 5108.20 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, CBTPA, and ATPDEA. The Committee hereby designates apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub-Saharan African

countries or in one or more eligible CBTPA beneficiary countries from U.S. formed fabrics containing such yarns as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in apparel sewn or otherwise assembled in an eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns; such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee notes that this designation under the ATPDEA renders apparel articles containing such yarn, sewn or otherwise assembled in an eligible ATPDEA beneficiary country, as eligible for quota-free and duty-free treatment under HTSUS subheading 9821.11.13, provided the requirements of that subheading are met.

EFFECTIVE DATE: May 28, 2004

FOR FURTHER INFORMATION CONTACT: Martin Walsh, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The commercial availability provisions of the AGOA, the ATPDEA, and the CBTPA provide for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamations 7350 and 7351 of October 4, 2000 and Presidential Proclamation 7616 of October 31, 2002, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002, the Committee was authorized to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA.

On January 14, 2004, the Committee received a request from Warren Corporation alleging that certain combed compact yarns, of wool or fine animal hair, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, CBTPA, and ATPDEA. It requested that apparel articles containing such yarns be eligible for preferential treatment under the AGOA, CBTPA, and ATPDEA. On January 26, 2004, the Committee requested public comment on the petition (69 FR 3569). On February 11, 2004, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On February 11, 2004, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On February 24, 2004, the U.S. International Trade Commission provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the yarn set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On March 15, 2004, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA, CBTPA, and ATPDEA.

The Committee hereby designates apparel articles, made from fabrics formed in the United States containing such yarns, that are sewn or otherwise assembled in one or more eligible sub-Saharan African countries or in one or more eligible CBTPA beneficiary countries from U.S. formed fabrics containing combed compact yarns, of wool or fine animal hair, classified in HTSUS subheadings 5107.10, 5107.20, or 5108.20 as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee also hereby designates apparel articles, made from fabrics formed in the United States containing such yarns, that are sewn or otherwise assembled in an eligible ATPDEA beneficiary country, as eligible to enter free of quotas and duties under HTSUS subheading 9821.11.10, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee notes that this designation under the ATPDEA renders apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country containing such yarn as eligible for quota-free and duty-free treatment under HTSUS subheading 9821.11.13, provided the requirements of that subheading are met.

An ''eligible beneficiary sub-Saharan African country'' means a country which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722), resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTSUS.

An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the Caribbean Basin Recovery Act (CBERA) (19 U.S.C. 2703(b)(5)(B)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)), resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

An ''eligible ATPDEA beneficiary country'' means a country which the President has designated as an ATPDEA beneficiary country under section 203(a)(1) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3202(a)(1)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section

203(c) and (d) of the ATPA (19 U.S.C. 3202(c) and (d)), resulting in the enumeration of such country in U.S. note 1 to subchapter XXI of Chapter 98 of the HTSUS.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–12105 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Request under the North American Free Trade Agreement (NAFTA)

May 25, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for sanitary articles made from tri-lobal rayon staple fiber.

SUMMARY: On May 18, 2004 the Chairman of CITA received a request from Procter & Gamble alleging that tri-lobal rayon staple fiber (38 mm, 3.3 decitex), classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 5504.10, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for sanitary articles classified under HTSUS 5601.10.20 should be modified to allow the use of non-North American staple fiber of the type described above.

The President may proclaim a modification to the NAFTA rules of origin, inter alia, only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether tri-lobal rayon staple fiber of the type described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 28, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On May 18, 2004 the Chairman of CITA received a request from Procter & Gamble alleging that tri-lobal rayon staple fiber (38mm, 3.3 decitex), classified under the HTSUS subheading 5504.10, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for sanitary articles classified under HTSUS 5601.10.20 should be modified to allow the use of non-North American staple fiber of the type described above.

CITA is soliciting public comments regarding this request, particularly with respect to whether the rayon staple fiber described above, classified in HTSUS sub-heading 5504.10, can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than June 28, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that tri-lobal rayon staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the staple fiber stating that it produces the staple fiber that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–12168 Filed 5–27–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 28, 2004.

Title, Form, and OMB Number: Automated Repatriation Tracking System; DD Form 2585; OMB Number 0704–0334.

Type of Request: Extension.

Number of Respondents: 5,000.

Responses Per Respondent: 1.

Annual Responses: 5,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 1,667.

Needs and Uses: Executive Order 12656 establishes the responsibilities for the Department of Health and Human Services and the Department of Defense to take care of any American citizen and family member that are evacuated from any country and ensure their personal needs are met. This information collection provides evacuation information necessary to account for any military and civilian regardless of nationality, who are processed through designated Repatriation Centers throughout the United States. The DD Form 2585, Repatriation Processing Center Processing Sheet, is used to collect the necessary data which is entered into the Repatriation Automated Tracking System; a series of reports that is accessible to the Department of Defense, Federal and State agencies, and the Red Cross, as required.

Affected Public: Individuals or households; Federal Government; State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection should be sent to Mr. Cushing, WHS/ESCD Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12112 Filed 5–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 28, 2004.

Title, Form, and OMB Number: Statement of Claimant Requesting Recertified Check; DD Form 2660; OMB Number 0730–0002.

Type of Request: Extension.

Number of Respondents: 114,308.

Responses Per Respondent: 1.

Annual Responses: 114,308.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 9,526.

Needs and Uses: The DD Form 2660, Statement of Claimant Requesting Recertified Check, is used to ascertain pertinent information needed by the Department of Defense to reissue checks to payees. In accordance with TFM Volume 1, Part 4, Section 7060.20 and DoD 7000.14–R, Volume 5, there is a requirement that a payee identify themselves and certify as to what happened to the original check issued by the government, such as non-receipt, loss, destruction, theft, etc. This collection will be used to identify rightful reissuance of government checks outside the Department of Defense.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 25, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12113 Filed 5–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 27, 2004.

ADDRESSES: Written comments and recommendations on the information collection should be sent to Michael Hartzell, Lt. Col., USAF, BSC, Health Program Analysis and Evaluation/TMA, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia, 22041–3206.

Title; Associated Form; and OMB Number: Viability of TRICARE Standard.

Needs and Uses: As mandated by Congress, confidential surveys of civilian physicians will be completed in TRICARE market areas within the United States to determine how many accept new TRICARE Standard patients in each market area. 20 TRICARE market areas in the United States will be conducted each fiscal year until all TRICARE market areas in the United States have been surveyed.

Affected Public: Individuals—Licensed MDs (Medical Doctors) and DOs (Doctor of Osteopathy).

Annual Burden Hours: 5,333.

Number of Respondents: 3,200.

Responses Per Respondent: 1 per person.

Average Burden Per Response: 10 minutes per survey.

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Health Program Analysis and Evaluation Directorate (HPAE) under the authority of the Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity will undertake an evaluation of the DoD's TRICARE Standard healthcare option. HPAE will collect and analyze data that are necessary to meet the requirements outlined in Section 723 of the National Defense Authorization Act for FY2004. Activities include the collection and analyses of data obtained confidentially from civilian physicians (MDs & DOs) within U.S. TRICARE market areas. Specifically, telephone surveys of civilian providers will be conducted in the TRICARE market areas to determine how many healthcare providers are accepting new patients under TRICARE Standard in each market area. The telephone surveys will be conducted in at least 20 TRICARE market areas in the United States each fiscal year until all market areas in the United States have been surveyed. In prioritizing the order in which these market areas will be surveyed, representatives of TRICARE beneficiaries will be consulted in identifying locations that had historical evidence of access-to-care problems under TRICARE Standard. These areas will receive priority in surveying. Information will be collected telephonically to determine the number of healthcare providers that currently accept TRICARE Standard beneficiaries as patients under TRICARE Standard in each market area. Providers will also be asked if they would accept TRICARE Standard beneficiaries as new patients under TRICARE Standard. Analyses and reports will include all legislative requirements.

Dated: May 21, 2004

L.M. Bynum,

Alternate OSD Federal Register Liaison,

[FR Doc. 04–12114 Filed 5–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 28, 2004.

Title, Form, and OMB Number: Request for Approval for Qualification Training and Approval of Contractor Flight Crewmember; DD Form 2627 and 2628; OMB Number 0704–0347.

Type of Request: Reinstatement.

Number or Respondents: 42.

Responses Per Respondent: 2.

Annual Responses: 81 (both forms).

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 7.

Needs and Uses: The information collection requirement is necessary to request qualification training for contractor crewmembers. The requirement to have government approval of contract flight crewmembers is in Defense Contract Management Agency Directive 1, Chapter 8, Contractor's Flight and Ground Operations. The contractor provides a personal history and requests the government approve training in a particular type government aircraft (DD Form 2627). The contractor certifies the crewmember has passed a flight evaluation and, with DD Form 2628, requests approval for the personnel to operate and fly government aircraft. Without the approvals, the contractor cannot use their personnel as requested.

Affected Public: Individuals or households; business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12115 Filed 5–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 234. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 234 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* June 1, 2004.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 233. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: May 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

BILLING CODE 5001–06–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 234 ARE UPDATES TO THE RATES FOR ALASKA, AMERICAN SAMOA, AND HAWAII.						
ALASKA						
ADAK	120		79		199	07/01/2003
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	170		89		259	06/01/2004
09/16 - 04/30	95		81		176	06/01/2004
BARROW	159		95		254	05/01/2002
BETHEL	119		77		196	06/01/2004
CLEAR AB	80		55		135	09/01/2001
COLD BAY	90		73		163	05/01/2002
COLDFOOT	135		71		206	10/01/1999
COPPER CENTER						
05/16 - 09/15	109		63		172	07/01/2003
09/16 - 05/15	99		63		162	07/01/2003
CORDOVA	110		75		185	06/01/2004
CRAIG	100		68		168	06/01/2004
DEADHORSE	95		67		162	05/01/2002
DELTA JUNCTION	89		75		164	06/01/2004
DENALI NATIONAL PARK						
06/01 - 08/31	114		65		179	06/01/2004
09/01 - 05/31	80		61		141	06/01/2004
DILLINGHAM	114		69		183	06/01/2004
DUTCH HARBOR-UNALASKA	119		72		191	06/01/2004
EARECKSON AIR STATION	80		55		135	09/01/2001
EIELSON AFB						
05/01 - 09/15	159		88		247	06/01/2004
09/16 - 04/30	75		79		154	06/01/2004
ELMENDORF AFB						
05/01 - 09/15	170		89		259	06/01/2004
09/16 - 04/30	95		81		176	06/01/2004
FAIRBANKS						
05/01 - 09/15	159		88		247	06/01/2004
09/16 - 04/30	75		79		154	06/01/2004
FOOTLOOSE	175		18		193	06/01/2002
FT. GREELY	89		75		164	06/01/2004
FT. RICHARDSON						
05/01 - 09/15	170		89		259	06/01/2004
09/16 - 04/30	95		81		176	06/01/2004
FT. WAINWRIGHT						
05/01 - 09/15	159		88		247	06/01/2004
09/16 - 04/30	75		79		154	06/01/2004
GLENNALLEN						
05/01 - 09/30	137		75		212	06/01/2004
10/01 - 04/30	89		70		159	06/01/2004
HEALY						
06/01 - 08/31	114		65		179	06/01/2004
09/01 - 05/31	80		61		141	06/01/2004

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HOMER				
05/15 - 09/15	145	77	222	06/01/2004
09/16 - 05/14	99	72	171	06/01/2004
JUNEAU	120	84	204	06/01/2004
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	110	83	193	04/01/2003
11/01 - 03/31	69	75	144	04/01/2003
KENNICOTT	179	83	262	06/01/2004
KETCHIKAN				
05/01 - 09/30	113	80	193	06/01/2004
10/01 - 04/30	98	78	176	06/01/2004
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	100	68	168	06/01/2004
KODIAK	99	81	180	06/01/2004
KOTZEBUE				
05/01 - 08/31	141	86	227	06/01/2004
09/01 - 04/30	125	85	210	06/01/2004
KULIS AGS				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
MCCARTHY	179	83	262	06/01/2004
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
NOME	120	89	209	06/01/2004
NUIQSUT	180	53	233	05/01/2002
PETERSBURG	90	64	154	06/01/2004
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/01 - 09/30	145	82	227	06/01/2004
10/01 - 04/30	89	72	161	06/01/2004
SITKA-MT. EDGECUMBE				
05/01 - 09/30	119	74	193	06/01/2004
10/01 - 04/30	99	72	171	06/01/2004
SKAGWAY				
05/01 - 09/30	113	80	193	06/01/2004
10/01 - 04/30	98	78	176	06/01/2004
SPRUCE CAPE	99	81	180	06/01/2004
ST. GEORGE	129	55	184	06/01/2004

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
TALKEETNA	100	89	189	07/01/2002
TANANA	120	89	209	06/01/2004
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	90	66	156	06/01/2004
10/01 - 04/30	60	63	123	06/01/2004
UMIAT	150	98	248	04/01/2003
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	129	77	206	06/01/2004
10/02 - 04/30	79	72	151	06/01/2004
WAINWRIGHT	80	55	135	09/01/2001
WASILLA				
05/01 - 09/30	134	82	216	06/01/2004
10/01 - 04/30	80	77	157	06/01/2004
WRANGELL				
05/01 - 09/30	113	80	193	06/01/2004
10/01 - 04/30	98	78	176	06/01/2004
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	135	67	202	06/01/2004
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	80	215	07/01/2003
HAWAII				
CAMP H M SMITH	129	91	220	06/01/2004
EASTPAC NAVAL COMP TELE AREA	129	91	220	06/01/2004
FT. DERUSSEY	129	91	220	06/01/2004
FT. SHAFTER	129	91	220	06/01/2004
HICKAM AFB	129	91	220	06/01/2004
HONOLULU (INCL NAV & MC RES CTR)	129	91	220	06/01/2004
ISLE OF HAWAII: HILO	100	80	180	06/01/2003
ISLE OF HAWAII: OTHER	150	79	229	06/01/2003
ISLE OF KAUAI	158	93	251	06/01/2004
ISLE OF MAUI	159	95	254	06/01/2004
ISLE OF OAHU	129	91	220	06/01/2004
KEKAHA PACIFIC MISSILE RANGE FAC	158	93	251	06/01/2004
KILAUEA MILITARY CAMP	100	80	180	06/01/2003
LANAI	400	148	548	06/01/2004
LUALUALEI NAVAL MAGAZINE	129	91	220	06/01/2004
MCB HAWAII	129	91	220	06/01/2004
MOLOKAI	93	91	184	06/01/2004
NAS BARBERS POINT	129	91	220	06/01/2004
PEARL HARBOR [INCL ALL MILITARY]	129	91	220	06/01/2004
SCHOFIELD BARRACKS	129	91	220	06/01/2004
WHEELER ARMY AIRFIELD	129	91	220	06/01/2004
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	129	88	217	07/01/2003
SAIPAN	121	90	211	07/01/2003
TINIAN	85	72	157	07/01/2003
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	98	83	181	08/01/2003
12/15 - 04/14	135	87	222	08/01/2003
ST. JOHN				
04/15 - 12/14	110	91	201	08/01/2003
12/15 - 04/14	185	98	283	08/01/2003
ST. THOMAS				
04/15 - 12/14	163	95	258	08/01/2003
12/15 - 04/14	220	99	319	08/01/2003
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 04–12116 Filed 5–27–04; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Comparator for Time-Temperature Indicator

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,737,274 B1 entitled ''Comparator for Time Temperature Indicator'' issued May 18, 2004. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–12104 Filed 5–27–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On April 12, 2004, the Department of Education published a notice in the **Federal Register** (Page 19170, Column 1) for the information collection, ''Report of Children with Disabilities Unilaterally Removed or Suspended/Expelled for More Than 10 Days''. The Type of Review is hereby corrected from ''Reinstatement'' to ''Revision''. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: May 24, 2004.

Angela C. Arrington,

Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–12095 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: July 13–14, 2004.

TIME: 8:30 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Crystal Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Don Richardson, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- The Biomass R&D Technical Advisory Committee will meet to obtain information on the various positions held regarding hydrogen energy and to discuss the Committee's position on hydrogen energy.
- The Biomass R&D Technical Advisory Committee will review the results of the 2004 Joint Solicitation and give recommendations on how to improve the process.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Don Richardson at 202–586–7766 or the Biomass Initiative at *laura.neal@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 25, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–12140 Filed 5–27–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 17, 2004 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200,

Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

5:30 p.m.—Informal Discussion.
6 p.m.—Call to Order; Introductions; Approve of May Minutes; Review Agenda.
6:05 p.m.—DDFO's Comments.
6:25 p.m.—Ex-officio Comments.
6:35 p.m.—Federal Coordinator Comments.
6:45 p.m.—Public Comments and Questions.
6:55 p.m.—Break.
7:05 p.m.—Task Forces/Presentations.
- Waste Disposition.
- Water Quality.
- C–400 Proposed Remedial Action Plan.
- Long Range Strategy/Stewardship.
- Risk-Based End State.
- Community Outreach.

8:05 p.m.—Public Comments and Questions.
8:15 p.m.—Administrative Issues.
- Review of Workplan.
- Review of Next Agenda.

8:35 p.m.—Review of Action Items.
8:50 p.m.—Subcommittee Reports.
- Executive Committee.

9:15 p.m.—Final Comments.
9:30 p.m.—Adjourn.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued in Washington, DC on May 25, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–12141 Filed 5–27–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CA305–0457; FRL–7668–2]

Adequacy Status of the Southeast Desert and Ventura County, CA; 1-Hour Ozone Progress and Attainment Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in California State Implementation Plan (SIP) submittals for progress and attainment of the 1-hour ozone National Ambient Air Quality Standards (NAAQS) in the Southeast Desert and Ventura County nonattainment areas are adequate for transportation conformity purposes. As a result of our finding, the Southern California Association of Governments, the Federal Highway Administration, and the Federal Transit Authority must use the motor vehicle emissions budgets from the submitted plan for future conformity determinations.

DATES: This determination is effective June 14, 2004.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/reg9sips.htm.* You may also contact Dave Jesson, U.S. EPA, Region IX, Air Division, AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (415) 972–3957 or *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our finding that the following emissions budgets contained in revisions to the 1-hour ozone progress and attainment SIP for the Southeast Desert Modified AQMA Area, submitted by the California Air Resources Board (CARB) on May 4, 2004, are adequate for transportation conformity purposes: 1-hour ozone budgets for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for the years 2005 and 2007. These budgets relate to the 2004 update to the Southeast Desert Ozone Attainment Plan, which consists of: (1) The Mojave Desert District Final 2004 Ozone Attainment Plan, adopted on April 26, 2004; (2) the 2004 Antelope Valley District Ozone Attainment Plan, adopted on April 20, 2004; and (3) the Coachella Valley Ozone Attainment Demonstration in the 2003 South Coast Air Quality Management Plan, adopted on August 1 and November 7, 2003.

This notice also announces our finding that the 2005 VOC and NO_X emissions budgets contained in revisions to the 1-hour ozone progress and attainment SIP for Ventura County, submitted by CARB on April 21, 2004, are adequate for transportation conformity purposes. These budgets are included in the Ventura County 2004 Air Quality Management Plan Revision adopted on April 13, 2004.

EPA Region IX made these findings in letters to CARB on May 21, 2004. We are also announcing these findings on our conformity Web site: *http://www.epa.gov/otaq/transp/conform/reg9sips.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criteria is that the plan provide for attainment or maintenance (as appropriate) of the relevant ambient air quality standard. We have preliminarily determined that the Southeast Desert and Ventura County SIP submittals provide for progress and attainment of the 1-hour ozone NAAQS, and that the budgets associated with the plans are consistent with the plan and, therefore, can be found adequate.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999, memo titled ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision''). We followed this guidance in making our adequacy determination on the budgets in the Southeast Desert and Ventura County SIP submittals.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 21, 2004.

Thomas Huetteman,

Acting Regional Administrator, Region IX.

[FR Doc. 04–12274 Filed 5–27–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 63]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to (1) evaluate whether the proposed collection is necessary for the paper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of collection of information on those who are to respond including through the use of appropriated automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

DATES: Comments due on or before July 27, 2004.

ADDRESSES: Direct all written comment and requests for additional information to Wendy Wright, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, *wendy.wright@exim.gov,* 202–565–3774.

OMB Number: 3048–0012.

Titles and Form Numbers: Export-Import Bank of the U.S. Foreign Content Report, EIB 01–02 and Export-Import Bank of the U.S. Cause Report, EIB 01–02–A.

Type of Review: Extension of a currently approved collection.

Need and Use: The information requested creates less of a burden on our exporters who previously certified foreign content for each shipment of goods. With the use of the forms, Ex-Im Bank documents the amount of foreign content in transactions through up-front reporting and back-end verification.

Affected Public: Business and other for-profit/not-for-profit institutions, farms.

Respondents: Entities involved in the export of U.S. goods and services, including Exporters, banks, and other non-financial lending institutions that act as facilitators.

Estimated Annual Respondents: 600.

Estimated Time Per Respondent: 1 hour.

Estimated Annual Burden: 600 hours.

Frequency of Response: Every medium- and long-term transaction.

Dated: May 24, 2004.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Content Report on Products & Services In Ex-Im Bank Transactions*

Date: _____

Name and Address of Supplier: _____

_____

_____

Representative of Supplier (Name and Title): _____

RE: Ex-Im Bank Credit/Guarantee/Insurance Policy Number: _____

Supply Contract Reference Number: _____

Purchaser: _____

The Export-Import Bank of the United States ("Ex-Im Bank") has issued a Credit/Guarantee/Insurance Policy to support Products and Services, as listed in the **attached report**, that were provided to the purchaser by the undersigned.

To the best of our knowledge the above information is true and accurate, and represents the identifiable Products and Services (U.S. & non-U.S. content) supplied by us and covered under the above referenced Credit/Guarantee/Insurance Policy Number. If requested by Ex-Im Bank, we agree to reasonably provide supplemental information to the content information described above. Ex-Im Bank will use the information reported herein to create an aggregate report to illustrate broad trends and patterns. Ex-Im Bank will treat all case-specific information as business confidential.

* Complete a Content Report for transactions supported by Medium- and Long-Term Loans, Guarantees, and Medium-Term Export Credit Insurance. For informational and reporting purposes only, Ex-Im Bank requests that Exporters submit a Content Report with the application for Medium-Term transactions, and with the initial Exporter's Certificate for Long-Term transactions. If at the completion of the work performed under a Supply Contract/Purchase Order(s), the foreign content amount changed by one percentage point or more of the value of the Net Contract Price, Exporters should submit a final revised Content Report within 60 days. Ex-Im Bank may contact Exporters to reconfirm the information provided in the Content Report.

EXPORT-IMPORT BANK OF THE UNITED STATES

ANNUAL AGGREGATE FOREIGN CONTENT "CAUSE" REPORT

Period:

Exporter:

Aggregate Goods and Services by 4-Digit SIC:	_____	_____	_____	_____	_____
1. The aggregate value of significant foreign content identified in Column B of the Content Report that is 50% or more of the value of the goods and services identified in Column A of the Content Report[1]	$____	$_____	$_____	$_____	$____
2. Of foreign content in 1 above, the % due to:					
A. Not made in US	____%	____%	____%	____%	____%
B. Not readily available	____%	____%	____%	____%	____%
C. Price	____%	____%	____%	____%	____%
(% of C above sourced from a less developed country)	(___%)	(___%)	(___%)	(___%)	(___%)
D. Other (Specify Other)	____%	____%	____%	____%	____%
	100%	100%	100%	100%	100%

Instructions for the Annual Aggregate Foreign Content Cause Report

This form should be completed by the same entity that completed the individual transaction-based Content Reports. The information reported herein should be taken from Column B of the Content Report. Only the individual components that represent foreign content that is 50% or more of the total value of the goods and services should be aggregated and included in this report.

Each of the goods and services (that meet the above 50% criteria) should be grouped into the appropriate 4-digit SIC, the same SIC used for the Content Report purposes. All information pertaining to the calendar year activity of a specific exporter may be reported on an aggregate basis within the 4-digit SIC classification. Ex-Im Bank requests exporters to submit this report by March 31 for activity supported by Ex-Im Bank during the previous calendar year.

EIB 01-02-A OMB 3048-0012

[1] This information should be obtained from the Content Reports which were submitted to Ex-Im Bank on a transactional basis for final authorizations made during the previous calendar year. The same SIC identified in the Content Report should be used for this report.

[FR Doc. 04–12091 Filed 5–27–04; 8:45 am]
BILLING CODE 6690–01–C

EXPORT-IMPORT BANK

[Public Notice 64]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) provides working capital guarantees to lenders. In assessing the creditworthiness of an applicant, Ex-Im Bank review EIB Form 84–1. This form provides information which allows the Bank to obtain legislatively required reasonable assurance of repayment, as well as to fulfill other statutory requirements. The form has had no change in content or purpose; it requires only a three-year extension.

DATES: Written comments should be received on or before June 28, 2004 to be assured of consideration.

ADDRESSES: Direct all requests for additional information to Pamela Bowers, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571 (202) 565–3792, or *Pamela.bowers@exim.gov.* Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers: U.S. Small Business Administration, Export-Import Bank of the United States Joint Application for Working Capital Guarantee.

OMB Number: 3048–0003.

Form Number: EIB–SBA 84–1 (Revised 8/2000).

Type of Review: Extension of expiration date.

Annual Number of Respondents: 600.

Estimated Time Per Respondent: 2 Hours.

Annual Burden Hours: 1,200.

Frequency of Reporting or Use: Upon application for guarantees or working capital Loans advanced by the lenders to U.S. exporters.

Dated: May 24, 2004.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB No.: 3048-0003
Expires February 29, 2004

(SBA Use Only) Date Received C.I.D. No. ☐ Intermediary	U.S. SMALL BUSINESS ADMINISTRATION EXPORT-IMPORT BANK OF THE UNITED STATES JOINT APPLICATION FOR WORKING CAPITAL GUARANTEE	(Ex-Im Bank Use Only) Date Received

PART A. PRINCIPAL PARTIES

1. Borrower/Exporter Please circle the appropriate answer: New to Ex-Im Bank or SBA? Yes No

Company Name	D&B No.		Telephone No.
Name and Title of Contact Person	Federal ID No.		Fax No.
Address	City	State	Zip

Gross Sales $	No. of Full-Time Employees	Primary SIC Code **OR** North American Industrial Classification System No. (NAIC)	Products/Goods/Services to be exported (Description)
	Small Business as stipulated by SBA Guidelines? Yes No	*Minority-Owned? Yes No *Women-Owned? Yes No	

Management (Proprietors, partners, officers, directors and holders of outstanding stock -100% of ownership must be shown). (Attach separate sheet of paper if necessary.)

Name and Social Security Number	Complete Address	% owned	*Military Service From: To:	*Race **	*Sex

*This information is collected for statistical purposes only. It has no bearing on the credit decision to approve or decline this application.
**Please use one of the following categories: 1) American Indian/Alaska Native; 2) Black/African American; 3) Asian; 4) Native Hawaiian/Pacific Islander ; 5) White; 6) Ethnicity Hispanic; 7) Not Hispanic.

Affiliate(s) (If more than one, please attach list on separate sheet of paper.)

Company Name	D&B No.	Telephone No.	
Name and Title of Contact Person	Federal ID No.	Fax No.	
Address	City	State	Zip

2. Personal Guarantor(s) (If more than one guarantor, please attach separate sheet of paper.)

Name	SSN	Telephone No. Fax No.	
Address	City	State	Zip

3. Lender Please circle the appropriate answer: New to Ex-Im Bank or SBA? Yes (If yes, submit annual report.) No

Name	Federal ID No.	Telephone No. Fax No.	
Address	City	State	Zip

OMB No.: 3048-0003
Expires February 29, 2004

PART B. INFORMATION ABOUT THE TRANSACTION

Loan Amount $	Terms and Fees ☐ 6 months ☐ 1 year ☐ Other (Specify)	Type (check one) ☐ Revolving ☐ Transaction(s) Specific
Interest Rate to be Charged Lender Interest Rate _____% Per Annum	Other Fees or Charges (type and amount)	Renewal? ☐ Yes ☐ No
If Interest Rate is to be Variable: Base Rate _____ Adjustment Period _____ (Monthly, Quarterly, Annually, etc.) Spread _____ Base Rate Source _____ (WSJ, LIBOR, etc.)		Conversion of Preliminary Commitment? ☐ Yes If yes, # _____ ☐ No

Were you assisted by an Ex-Im Bank City/State partner or a Small Business Development Center?	Yes	No	If yes, please identify: Name & Address Contact Name _____ Telephone No. _____
Estimated Total Export Sales to be supported by this Loan $ _____			
Principal Countries of Export: (Please identify the top 3 countries.)			
U.S. Content _____% (Ex-Im Bank applicants only)			
Please estimate the number of jobs to be supported by this Loan:	_____ Maintained jobs _____ Additional jobs created		
Are Performance Guarantees or Standby Letters of Credit to be issued under this Loan?	Yes	No	Percentage of Loan to be utilized for performance guarantees _____%
Please answer the following questions with regard to the "export items" to be exported from the U.S.			
Military Is the Buyer associated in any way with the military? Are the items to be used by the military, or are they defense articles, or have a military application?	Yes	No	If yes, please attach a description of the buyer or items, as applicable.
Nuclear Are the items to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities?	Yes	No	If yes, please attach a description of the items. (Ex-Im Bank applicants only)
Environmental Are the products to be used for an environmental project or have perceptible environmental benefits?	Yes	No	If yes, please attach a description of the items and answer the following: Identify the project: _____ Project Location: _____ Project Sector or Industry: _____ If not related to a specific project, the products are to be used to create an environmental benefit in: _____(Please identify Sector)
Are the items on the **U.S. Munitions Control List** (Part 121 of Title 22 of the Code of Federal Regulations), **OR** do they require a validated export license from the Bureau of Export Administration?	Yes	No	If yes, please attach a description of the items. If uncertain whether a validated export license is required, written verification from the appropriate licensing agency may be required before loan approval. (Ex-Im Bank applicants only)

OMB No.: 3048-0003
Expires February 29, 2004

PART C. CERTIFICATIONS

1. **Borrower/Exporter Certification**

The Borrower/Exporter certifies that the facts stated and the representations made in this application and any attachments to this application are true, that the Borrower/Exporter has not omitted any material facts, and that the Borrower/Exporter is not delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date hereof.

The undersigned further certifies that it is not currently, nor has it been within the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Governmentwide Nonprocurement Debarment and Suspension Regulations: Common Rule), 53 Fed. Reg. 19204 (1988).

Any applicant who knowingly makes a false statement or conceals a material fact in order to obtain a loan guarantee from SBA or Ex-Im Bank may be fined up to $10,000 or imprisoned for not more than five years (or both) under 18 USC 1001.

Please circle the appropriate answer. Attach complete information for any "yes" circled.

1. Are there any pending or threatened liens, tax liens, judgments or material litigation against the:

Borrower YES NO **Guarantor** YES NO

2. Has the Borrower/Exporter or its owner*(s)*, or the Guarantor ever filed for protection under U.S. bankruptcy laws? Has either had an involuntary bankruptcy petition filed against it?

Borrower YES NO **Guarantor** YES NO

3. Has the Borrower/Exporter or its owner*(s)* or affiliates, or the Guarantor ever previously requested U.S. Government financing?

Borrower YES NO **Guarantor** YES NO

4. Is/has the Borrower or Guarantor: (a) presently under indictment, on parole or probation; or (b) ever been charged for any criminal offense; or (c) ever been convicted, placed on pretrial diversion, or placed on any form of probation including adjudication withheld pending probation for any criminal offense other than a minor vehicle violation?

Borrower YES NO **Guarantor** YES NO

5. Are all owners and guarantors U.S. Citizens? YES NO If no, give alien registration number: _____

(SBA APPLICANTS ONLY)

Name of Borrower/Exporter*	Date	Name of Guarantor*	Date
Signature		Signature	
Name and Title (Print or Type)		Name and Title (Print or Type)	

***Please attach a signed, duplicate original of Part C for each Borrower and each Guarantor**

2. **Lender Certification**

The Lender certifies that the facts stated and the representations made in this application and any attachments to this application are true, to the best of its knowledge and belief after due diligence, that the Lender has not omitted any material facts, and that the Lender is not delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of this application. By signing and submitting this application, the Lender certifies that it would not be willing to make this loan without the guarantee of Ex-Im Bank or SBA.

The Lender further certifies to the best of his or her knowledge and belief, that if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this commitment providing for the United States to guarantee a loan, the undersigned shall complete and submit a Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. If Standard Form-LLL is necessary, it may be obtained from Ex-Im Bank or SBA.

The undersigned further certifies that it is not currently, nor has it been within the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Governmentwide Nonprocurement Debarment and Suspension Regulations: Common Rule), 53 Fed. Reg. 19204 (1988).

I certify that none of the Lender's employees, officers, directors, or substantial stockholders (more than 10%) have a financial interest in the applicant. Any Lender who knowingly makes a false statement or conceals a material fact in order to obtain a guaranteed loan from SBA or Ex-Im Bank may be fined up to $10,000 or imprisoned for not more than five years (or both) under 18 USC 1001.

Name of Lender	Date
Signature	
Name and Title (Print or Type)	

OMB No.: 3048-0003
Expires February 29, 2004

Right of Financial Privacy Act of 1978 (12 U.S.C. 3401)
This is notice to you as required by the Right of Financial Privacy Act of 1978, of SBA/Ex-Im Bank's access rights to financial records held by financial institutions that are or have been doing business with you or your business, including any financial institutions participating in a loan or loan guarantee. The law provides that SBA/Ex-Im Bank shall have a right of access to your financial records in connection with its consideration or administration of assistance to you in the form of a Government loan or loan guarantee agreement. SBA/Ex-Im Bank is required to provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records, after which no further certification is required for subsequent accesses. The law also provides that SBA/Ex-Im Bank's access rights continue for the term of any approved loan or loan guarantee agreement. No further notice to you of SBA/Ex-Im Bank's access rights is required during the term of any such agreement.

The law also authorizes SBA/Ex-Im Bank to transfer to another Government authority any financial records included in an application for a loan, or concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan or loan guarantee or to collect on a defaulted loan or loan guarantee. No other transfer of your financial records to another Government authority will be permitted by SBA/Ex-Im Bank except as required or permitted by law.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and the Privacy Act of 1974 (5 U.S.C. 552a), the applicant is hereby notified that:

(1) The purpose of the information collected in this application is **to determine the eligibility** of the request.
(2) The information collected will be analyzed to **determine the ability** of the participants to perform the transaction and pay for it.
(3) **Public burden** reporting for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to Office of Management and Budget, Paperwork Reduction Project OMB#3048-0009, Washington, D.C. 20503.
(4) This information is being requested under the authority of the Export-Import Bank Act of 1945 (12 U.S.C. 635-635i-7); disclosure of this information is mandatory; and failure to provide the requested information may result in Ex-Im being unable to determine your eligibility for the transaction being requested.
(5) The information collected will be held **confidential** subject to the Freedom of Information Act in Title 5, United States Code, Section 552, and the Privacy Act of 1974 (5 U.S.C. 552a).
(6) Ex-Im may not require the information requested in this application and applicants are not required to respond unless a currently valid OMB control number is displayed on the form (see upper right of each page).

OMB No.: 3048-0003
Expires February 29, 2004

APPLICATION INSTRUCTIONS

PART A. PRINCIPAL PARTIES

1. **Borrower/Exporter.** Complete this section with information on the individual or corporate borrower. Provide the preliminary SIC code **OR** North American Industrial Classification System No. (NAIC) of the borrower, rather than the product being exported. **Management.** Complete this section for each proprietor, partner, officer or director owning 20% or more of the company.

2. **Personal Guarantor(s).** The personal guarantee of the owner(s) is required in most cases.

3. **Lender.** Leave blank if you are applying for a Preliminary Commitment and a prospective lender has not been identified.

PART B. INFORMATION ABOUT THE TRANSACTION

Provide the loan amount, term and type of loan requested, and answer all questions in Part B. (See also Checklist item 2 below.)

PART C. CERTIFICATIONS

This section must be signed by an authorized representative of the borrower and, if a request for a final commitment, an authorized representative of the lender.

CHECKLIST OF INFORMATION TO BE ATTACHED

(Note: All Attachments must be signed and dated by all person(s) signing this form.)

	Yes	N/A
BACKGROUND		
1. Brief resume of principals and key employees, History of business; copy of business plan, if available; identify whether sole proprietorship, general partnership, limited liability company (LLC), corporation and/or subchapter-S corporation.		
2. Explanation of use of proceeds and benefits of the loan guarantee, including details of the underlying transaction(s) for which the loan is needed, including country(s) where the buyers are located.		
TRANSACTION		
3. Attach product literature. If applicable, attach description of items if they are nuclear, military, environmental, on the U.S. Munitions Control List, or require an export license.		
4. Copy of letter of credit and/or copy of buyer's order/contract, if available.		
5. Export credit insurance-related material (policy, application, buyer credit limit), if applicable.		
6. Copy of export license, if required.		
FINANCIAL INFORMATION		
7. Business financial statements (Balance Sheet, Income Statement, statement of Cash Flows) for the last three (3) years, if applicable, supported by the most recent Federal income tax return for the business. SBA applicants must submit the last three (3) years of signed, Federal income tax returns for the business.		
8. Current financial statement (interim) dated within ninety (90) days of the date of application filing.		
9. Aging of accounts receivable and accounts payable.		
10. Schedule of all principal officer/owner's compensation for the past three (3) years and current year to date [if none, please indicate].		
11. Signed joint personal financial statements(s) of each major shareholder(s)/partner(s), owner(s), of the company (with 20% or greater ownership, including assets and liabilities of both spouses) and their most recent Federal income tax return; (not required for venture capital partners).		
12. Estimate of monthly cash flow for the term of the loan, highlighting the proposed export transaction.		
13. Description of type and value of proposed collateral to support the loan (company assets/export product, i.e., inventory, accounts receivable, other).		
14. If Lender, attach Credit memorandum. For SBA Applications, attach D&B Report and Personal Credit Reports on Principals and Guarantors.		
15.For **Ex-Im Bank Applications** only: Nonrefundable $500 application fee for a Preliminary Commitment or nonrefundable $100 application fee for a Final Commitment, whichever is applicable, by check or money order made out to the Ex-Im Bank.		
16. SBA Form 1261 (**SBA Applicants only**)		
17. Copy of IRS Form 4506 (original to be submitted to IRS by the Lender). (**SBA Applicants only**)		

OMB No.: 3048-0003
Expires February 29, 2004

MAILING/FORWARDING INSTRUCTIONS

Please circle the appropriate answer.

1. If submitted by a Borrower/Exporter
   a. Is Borrower/Exporter's requested loan amount in Part B, $1,111,111 or less? YES NO

   b. Is Borrower/Exporter a small business, as defined by Title 13 CFR Part 121.601? YES NO

   If answer to *both* of the above is YES, send entire set of materials to the SBA Representative in the U.S. Export Assistance Center nearest you. Call (800) 827-5722 for the address.

   If answer to *both* of the above is NO, send entire set of materials to:

   Export-Import Bank of the U.S.
   Office of Credit Applications and Processing
   811 Vermont Avenue, NW
   Washington, DC 20571

2. If submitted by a Lender.

   a. **SBA Participating Lenders** must submit with this application a Lender's check equal to 0.25% of the guaranteed amount of the loan application with a maturity of twelve (12) months or less.

   b. Is Lender using its **Ex-Im Bank Delegated Authority**? YES NO
   If YES, send the application, the Loan Authorization Notice (two (2) originals), the appropriate facility fee, and the $100 application fee to the Ex-Im Bank address *above, **irrespective of the guarantee amount**.*

Public Burden Statements

Public burden reporting for this collection of information is estimated to average 2 hours per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: The Office of Management and Budget, Paperwork Reduction Project (3048-0003), Washington, DC 20503.

FOR SBA USE ONLY			
Loan Officer's Recommendations	☐ Approve	☐ Decline	State Reason(s)
Signature	Title		Date
Other Recommendation if required	☐ Approve	☐ Decline	State Reason(s)
Signature	Title		Date
THIS BLOCK TO BE COMPLETED BY SBA OFFICIAL TAKING FINAL ACTION			
☐ Approve	☐ Decline	State Reason(s)	
Signature	Title		Date

[FR Doc. 04–12092 Filed 5–27–04; 8:45 am]
BILLING CODE 6690–01–C

FARM CREDIT SYSTEM INSURANCE CORPORATION

Sunshine Act Meeting

AGENCY: Farm Credit System Insurance Corporation Board.

ACTION: Regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 2004, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- March 26, 2004 (Regular Meeting)

B. Business Reports

- Financials
- Evaluation of Options for Meeting Accounting/Financial Report Requirements
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Proposed Rule on Golden Parachute and Indemnification Payments

Closed Session

- Report on System Performance

Dated: May 26, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 04–12265 Filed 5–26–04; 12:09 pm]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

May 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 28, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kristy L. LaLonde, Office of Management and Budget, Room 10234 NEOB, Washington, DC 20503, (202) 395–3087, or via fax at 202–395–5167 or via Internet at *Kristy_L._LaLonde@omb.eop.gov*, and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via internet to Judith-B.Herman@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB processing review of this new information collection with an OMB approval by June 7, 2004.*

OMB Control Number: 3060–XXXX.

Title: Regulatory Fee Assessment Notifications.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local and tribal government.

Number of Respondents: 1,130.

Estimated Time Per Response: .25 hours (15 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 283 hours.

Total Annual Cost: N/A.

Needs and Uses: Each year the Commission collects Congressionally-mandated regulatory fees from its regulates based on a schedule of fees that it establishes in an annual rulemaking proceeding. In the past years, the Commission pulled licensee addresses from its databases and mailed to these licensees Public Notices that (1) announced when regulatory fees are due; and (2) provided guidance for making fee payments. For the FY 2004 regulatory season, the Commission is going to send fee assessments to cable TV operators, media services licensees, and commercial mobile radio service (CMRS) licensees so that they have an opportunity to counter, update or rectify basic license data and assessed fee amounts well before the actual due date for submission of regulatory fee payments. We will use the information to update our database.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–12165 Filed 5–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 27, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Bill for Collection.

Form No.: FCC Form 163.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 120,000.

Estimated Time Per Response: .25 hours (15 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 30,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The FCC Form 163 is used by the Commission to bill entities for an unpaid fee. Such fees as: application fees, regulatory fees, fines and forfeiture payments, freedom of information requests, international telecommunications settlements, and interagency reimbursable agreements will be paid via this form. Most of the information on the form is populated by the Commission. The respondent will complete the Payer FCC Registration Number (FRN) and indicate their method of payment, *i.e.*, credit card, check, wire transfer, Intra-Governmental Payment and Collection (IPAC), and Military Interdepartmental Purchase Request (MIPR). If paying by credit card, the respondent will indicate which credit card is being used, enter the credit card number, expiration date, and sign and date the form to authorize the charge.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–12166 Filed 5–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of an Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Foreign Branching and Investment By Insured State Nonmember Banks.''

DATES: Comments must be submitted on or before July 27, 2004.

ADDRESSES: Interested parties are invited to submit written comments to Leneta Gregorie, Counsel, Legal Division, Room 3062, Attention: Comments/Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Foreign Branching and Investment by Insured State Nonmember Banks.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments may be submitted electronically to *comments@fdic.gov.* Comments may 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, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, (202) 898–3719, or at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Foreign Branching and Investment By Insured State Nonmember Banks.

OMB Number: 3064–0125.

Affected Public: All financial institutions.

Estimated Number of Respondents: 61.

Estimated Number of Responses: 61.

Estimated Time per Response: 2 hours–400 hours.

Estimated Total Annual Burden: 20,298 hours.

General Description of Collection: The Federal Deposit Insurance (FDI) Act requires nonmember banks to obtain FDIC consent to establish or operate a branch in a foreign country, or to acquire and hold, directly or indirectly, stock or other evidences of ownership in any foreign bank or other entity. The FDI Act also authorizes the FDIC to impose conditions for such consent and to issue regulations related thereto. The information collection activities attributable to 12 CFR part 347 and part 303, subpart J are a direct consequence of these statutory requirements.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 24th day of May, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–12106 Filed 5–27–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Preliminary Measure Sets for the National Healthcare Quality Report and the National Healthcare Disparities Report

Request for Comments

The Agency for Healthcare Research and Quality (AHRQ) announces a request for public comment on the Proposed 2004 Measure Sets to be used in preparing the National Healthcare Quality Report (NHQR) and National Healthcare Disparities Report (NHDR). The NHQR and NHDR are congressionally mandated reports (*see* 42 U.S.C. 299b–2(b)(2) regarding an annual report on National trends in health care quality and *see* 42 U.S.C. 299a–1(a)(6) regarding an annual report on disparities in health care among AHRQ's priority populations). The 2003 Measure Sets for the reports were generated through extensive input with public and private organizations, including a call for measures to Federal agencies and private organizations AHRQ issued through the Quality Interagency Coordination Task Force (QuIC), from October 2000–February 2001. The Institute of Medicine issued a separate call to private organizations from June–July 2000, the results of which were shared with the Department of Health and Human Services (DHHS). Interagency DHHS working groups then reviewed and revised the candidate measures. A public hearing on the revised measures was held in July 2002 with the National Committee on Vital and Health Statistics. The 2003 reports to Congress, based on these measure sets, were released in December 2003. AHRQ and the interagency working groups for the reports have been working to update the measure sets based on comments received during the Departmental clearance of the 2003 reports and the two public comment periods for the 2003 reports. AHRQ and the interagency working groups are now seeking comments on the revised measure sets for each report. In general, AHRQ is interested in comments on (1) the extent to which each proposed new measure set consists of measures that meet the criteria of importance, scientific soundness, and feasibility; (2) the appropriateness of the data sources for each measure; and (3) the extent to which each set has balance, comprehensiveness, and robustness.

AHRQ is also looking for comments on the set of proposed measures that will be highlighted in the 2004 NHQR and NHDR. The proposed highlight measures are a subset of the larger measure sets for the NHQR and NHDR and will be featured in the report text.

Availability of Preliminary Measure Set

A copy of the Preliminary Measure Set for the 2004 NHQR is available from AHRQ Web site at: *http://www.ahrq.gov/qual/nhqr04/premeasures.htm.*

A copy of the Preliminary Measure Set for the 2004 NHDR is available from AHRQ Web site at: *http://www.ahrq.gov/qual/nhdr04/premeasures.htm.*

Copies of the List of Proposed Highlight Measures are available from the AHRQ Web site at *http://www.ahrq.gov/qual/nhqr04/himeasures.htm.*

For organizations without access to the Internet, AHRQ will make a paper version available either through overnight mail or by fax upon written request. Requests for paper versions of the preliminary measure set should be faxed to the fax number below.

Comments Deadline

Written comments will be accepted by 30 days after publication. For submission of written comments and additional information: Ed Kelley, PhD, Director, National Healthcare Quality Report, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, e-mail: *ekelley@ahrq.gov* or absent internet access, fax to Dr. Edward Kelley at (301) 427–1341.

Public Review of Comments

Comments and responses received will be available for public inspection at AHRQ's Information Resource Center (IRC) public reading room between the hours of 8:30 a.m. and 5 p.m. on regular business days at 540 Gaither Road, Rockville, Maryland 20850. Arrangements for viewing public comments may be made by calling (301) 427–1287.

Responses may also be accessed through AHRQ's Electronic Freedom of Information Reading Room.

Dated: May 24, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–12107 Filed 5–27–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1269–N]

Medicare Program; Establishment of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) and Request for Nominations for Members

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) and discusses the group's purpose and charter. It also solicits nominations for members.

DATES: Nominations for membership will be considered if they are received by July 12, 2004.

ADDRESSES: Send nominations to—Division of Acute Care, Mail stop C4–08–06, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; Attention: Beverly J. Parker.

Send written requests for copies of the EMTALA TAG Charter to—Division of Acute Care, Mail stop C4–08–06, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; Attention: Marianne M. Myers.

FOR FURTHER INFORMATION CONTACT: Beverly J. Parker (410) 786–5320. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening

examinations of medical conditions, as well as necessary stabilizing treatment or appropriate transfer. In addition, section 1867(h) of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire about the individual's payment method or insurance status. Section 1867(d) of the Act provides for the imposition of civil monetary penalties on hospitals and physicians responsible for negligently violating a requirement of that section, through actions such as the following: (a) Negligently failing to appropriately screen an individual seeking medical care; (b) negligently failing to provide stabilizing treatment to an individual with an emergency medical condition; or (c) negligently transferring an individual in an inappropriate manner. (Section 1867(e)(4) of the Act defines ''transfer'' to include both transfers to other health care facilities and cases in which the individual is released from the care of the hospital without being moved to another health care facility.)

These provisions, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the patient antidumping statute. EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Congress enacted these antidumping provisions in the Social Security Act because of its concern with an increasing number of reports that hospital emergency rooms were refusing to accept or treat individuals with emergency conditions if the individuals did not have insurance.

We presented and implemented these EMTALA provisions through proposed and interim final rules published in the **Federal Register** on June 16, 1988 (53 FR 22513), and June 22, 1994 (59 FR 32120), respectively. In May 9, 2002, **Federal Register** (67 FR 31404), we proposed further revisions to the EMTALA regulations. These proposals were designed address issues and concerns which had arisen following publication of the interim final rule with comment period by clarifying policies relating to the responsibilities of Medicare-participating hospitals in treating individuals with emergency medical conditions who present to a hospital under the provisions of EMTALA. In the September 9, 2003, **Federal Register** (68 FR 53222), we finalized these proposals.

Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), requires that the Secretary establish a Technical Advisory Group (TAG) to solicit advice concerning issues related to EMTALA regulations and implementation.

II. Charter, General Responsibilities, and Composition of the EMTALA TAG

A. Charter Information and General Responsibilities

On May 11, 2004, the Secretary signed the charter establishing the EMTALA TAG. This charter will terminate 30 months from the date of the EMTALA TAG's first meeting. The EMTALA TAG, as chartered, under the legal authority of section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2. In accordance with section 945 of the MMA, the EMTALA TAG will meet at least twice a year and all meetings will be open to the public.

You may obtain a copy of the Secretary's charter for the EMTALA TAG by mailing a written request to the address specified in the **ADDRESSES** section of this notice.

Section 945 of the MMA specifies that the EMTALA TAG—

- Will review the EMTALA regulations;
- May provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Will solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations; and
- May disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

B. Composition of the EMTALA TAG

Section 945 of the MMA also specifies the composition of the EMTALA TAG. It states that the EMTALA TAG will be composed of 19 members including the Administrator of the Centers for Medicare & Medicaid Services (CMS) and the Inspector General of the Department of Health and Human Services (DHHS) in addition to the number and type of individuals specified in each of the following categories:

- Four representatives of hospitals, including at least one public hospital, that have experience with the application of EMTALA and, at least, two hospitals that have not been cited for EMTALA violations;
- Seven practicing physicians drawn from the fields of emergency medicine, cardiology or cardiothoracic surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology and psychiatry, with not more than one physician from any particular field;
- Two representatives of patients;
- Two staff persons involved in EMTALA investigations from different CMS regional offices;
- One representative from a State survey agency involved in EMTALA investigations and one representative from a Quality Improvement Organization (QIO), both of whom shall be from areas other than the regions represented by the CMS regional offices.

III. Submission of Nominations

We are requesting nominations for membership on the EMTALA TAG. The Secretary will consider qualified individuals who are nominated by organizations representing providers and patients when selecting practicing physicians, patients, and hospital representatives. The Secretary will also consider qualified individuals who are self-nominated when selecting CMS regional office, State survey agency, and QIO representatives. The Secretary will appoint members to serve on the EMTALA TAG from among those candidates determined to have the technical expertise required to meet the statutory requirements and in a manner to ensure an appropriate balance of membership.

Nominations may be made for one or more qualified individuals for each of the categories listed in section II.B. of this notice. Each nomination must include the following:

1. A letter of nomination that contains—

a. Contact information for both the nominator and nominee (if not the same); and

b. The category, as specified in section II.B. of this notice for which the nomination is being made (for example, hospital representative or practicing physician).

2. A statement from the nominee that he or she is willing to serve on the EMTALA TAG for its duration (that is, at least 30 months from date of the first meeting) and an explanation of interest in serving on the EMTALA TAG. (For self-nominations, this information may be included in the nomination letter.)

3. A curriculum vitae that indicates the nominee's educational and EMTALA-related experiences.

4. Three letters of reference that support the nominee's qualifications for participation on the EMTALA TAG. (For nominations other than self-nominations, a nomination letter that includes information supporting the nominee's qualifications may be

counted as one of the letters of reference.)

5. Additional information is required for the following categories of nominations:

a. Hospital representatives—In your statement regarding serving on the EMTALA TAG indicate—

(1) Your hospital's Medicare provider number;

(2) The type of hospital (public or private); and

(3) Whether or not your hospital has been cited for an EMTALA violation and, if so, the nature of the citation.

b. Practicing physicians—In your statement regarding serving on the EMTALA TAG indicate—

(1) Your board or specialty society and certification (if any) for your field of service;

(2) Your Unique Physician Identification Number (UPIN);

(3) Whether or not you have been cited for an EMTALA violation and, if so, the nature of the violation.

c. Representatives from the CMS regional office, State survey agency or Quality Improvement Organization—In your statement regarding serving on the EMTALA TAG indicate the extent of your experience with EMTALA investigations.

To ensure that a nomination is considered, we must receive all of the nomination information specified in section III of this notice by July 12, 2004.

Authority: Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: April 26, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–11936 Filed 5–27–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Grant Award to American Academy of Family Physicians for Phase One of an Open Source EHR Pilot Project Entitled ''Making the Transition From Paper to Electronics in Office-Based Medical Practices''

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS.

ACTION: Notice of grant award.

SUMMARY: The Centers for Medicare & Medicaid Services has awarded a grant entitled ''Open source EHR Pilot Project, Phase One: Making the Transition from Paper to Electronics in Office-Based Medical Practices'' to the American Academy of Family Physicians (AAFP), 11400 Tomahawk Creek Parkway, Leawood, KS 66211–2672, in response to an unsolicited application. The AAFP proposes that it will provide a comprehensive, low-cost, standardized, secure, and open source electronic health record (EHR) to the health care community. As a national academy, the AAFP is inherently familiar with the resources required and the necessary questions to be asked in order to make this a viable project, particularly on a national scale. The total amount of the award is $100,000 for the period June 1, 2004, through November 30, 2004. This project is an opportunity for CMS to further its objective of providing Medicare/Medicaid beneficiaries with information to make better choices. It will investigate the use of Open Source EHR as a tool for improving quality of care for selected patient populations, *e.g.*, diabetes and asthma, through routine collection of quality indicator and performance data and the delivery of evidenced-based guidelines and plans of care at the time of EHR use. This project is consistent with CMS' goal to improve health care quality and consumer decision-making in health care. Funding of this unsolicited proposal will result in a desirable public benefit in that its aim is to provide improvements in quality and safety of care delivery.

FOR FURTHER INFORMATION CONTACT: Albert G. Deal, Office of Research, Development, and Information, Centers for Medicare & Medicaid Services, C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6645, or Judy Norris, Grants Officer, Department of Health and Human Services, OOM/AGG/CMS, C2–21–15, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5130.

(Catalog of Federal Domestic Assistance Program No. 93.779, Centers for Medicare & Medicaid Services, Research, Demonstrations and Evaluations)

Authority: Section 1110 of the Social Security Act.

Dated: May 18, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–12275 Filed 5–27–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2195–N]

RIN 0938–ZA47

Medicaid Program; Demonstration To Improve the Direct Service Community Workforce

ACTION: Notice.

Part 1. Overview Information.

Funding Opportunity Title: Medicaid Program; Demonstration To Improve the Direct Service Community Workforce.

Catalog of Federal Domestic Assistance (CFDA) No: 93.779.

DATES: No new applications will be accepted.

Part 2. Full Text of the Announcement.

I. Funding Opportunity Description

This notice announces the award of approximately $6 million in funding through our ''Demonstration to Improve the Direct Service Community Workforce'' initiative pursuant to the President's Executive Order 13217 ''Community-Based Alternatives for Individuals with Disabilities'' and authorized under section 1110 of the Social Security Act. The ''Demonstration to Improve the Direct Service Community Workforce'' grants are designed to assist States and others develop innovative programs that improve recruitment and retention of direct service workers. The House of Representatives Conference Report (HR Conf. Rpt No. 108–401, at 784 [2003]) that accompanied the Consolidated Appropriations Act, 2004 (Pub. L. 108–199) outlines the scope of this project.

These grants are a part of the President's New Freedom Initiative to eliminate barriers to equality and grant a ''New Freedom'' to children and adults of all ages who have a disability or long-term illness so that they may live and prosper in their communities. This notice also contains information about the manner in which we will continue the award process that originally started in fiscal year (FY) 2003. We will not accept any new applications for the ''Demonstration to Improve the Direct Service Community Workforce'' grants in FY 2004.

The purpose of this demonstration program is to develop and implement programs that will increase the pool of direct care service workers, who help support people with disabilities in the community, through recruitment and

retention strategies. Examples of potentially fundable demonstration programs might include, but are not limited to wage or time-off incentives, continuing education, outreach to underserved populations, cultural, or logistical barriers.

II. Award Information

On March 20, 2003, we published a notice titled ''Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) and Solicitation of Applications'' in the **Federal Register** (68 FR 13715). The full solicitation is available at *http://www.cms.hhs.gov/newfreedom/dswsolicitation.pdf*. Under this notice, we invited proposals from States and others, in partnership with their disability and aging communities, to create systems that will improve the recruitment and retention of direct service workers. Grant applications were due August 12, 2003.

The response of States and other eligible entities to this opportunity was extraordinary: we received over 100 applications for these grants. The response revealed a strong interest on the part of States and their citizens to address the need for a stable direct service community workforce. In October 2003, we announced the award of five grants totaling $4,370,000. Each of these grants had a 36-month budget period.

Due to the extraordinary response we received from the ''Demonstration to Improve the Direct Service Community Workforce'' solicitation in FY 2003, we will not accept any new applications in FY 2004. Instead, we will continue to process the ranked applications submitted in FY 2003, beginning with the highest-ranked applications that were not funded in FY 2003. Each of the FY 2004 grants awarded in this notice has a 36-month budget period.

III. Eligibility Information

1. Eligible Applicants

We have offered FY 2004 funding to those eligible applicants. Eligible applicants are those applicants who (1) submitted an application in FY 2003 and (2) received from us written notification indicating that their application received a score from the review panel in a range that will permit us to make an award in FY 2004.

2. Cost Sharing or Matching

Matching funds of either in-kind or cash contributions totaling 5 percent of the project's total value are required.

IV. Application and Submission Information

1. Address To Request Application Package

No new applications will be accepted. Only eligible applicants will be funded.

2. Content and Form of Application Submission

No new applications will be accepted.

3. Submission Dates and Times

No new applications will be accepted.

4. Funding Restrictions

Proposals that included a health insurance intervention were eligible for funding up to $1,403,000 and proposals that targeted other interventions were eligible for funding up to $680,500.

V. Application Review Information

1. Criteria

Since we received far more applications in FY 2003 than we were able to fund, we are announcing our intention to continue the award process for eligible applicants (see definition of eligible applicants in the eligibility information section of this notice).

2. Review and Selection Process

We have used the review panel scores from FY 2003 to determine the ranking of applications and will attempt to provide funding for applications where funding was previously unavailable. We reserve the right to reallocate those funds to the next highest-ranked eligible applicant(s) if eligible applicants are subsequently determined not to have met all of the requirements as detailed in the award information section of this notice, the terms and conditions of grant awards, or otherwise fail to respond to us. We have determined that we will be able to fund, in FY 2004, five new ''Demonstration to Improve the Direct Service Community Workforce'' grants.

3. Anticipated Announcement and Award Dates

We anticipate that these grants will be officially awarded on or before September 30, 2004. New grantees may expend grant funds over a 36-month period from the date of the award. New grantees are listed in ''Chart—2004 Demonstration to Improve the Direct Service Community Workforce Grant Awards'' in section VIII of this notice.

VI. Award Administration Information

1. Award Notices

No new applications will be accepted. Eligible applicants will receive an official Notice of Grant Award (Form CMS 6-U6-PG) along with terms and conditions of the grant award.

2. Administrative and National Policy Requirements

Specific administrative and policy requirements of grantees, including the matching fund requirements, as detailed in the full solicitation, available section II of this notice, will continue to apply to all Eligible Applicants that receive awards in FY 2004.

3. Reporting

Specific reporting requirements of grantees, as detailed in section II of this notice, will continue to apply to all eligible applicants that receive awards in FY 2004.

VII. Agency Contacts

Programmatic questions about the Demonstration to Improve the Direct Service Community Workforce grants may be directed to: Kate King, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, DEHPG/DCSI, Mail Stop S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, 410–786–1283 (voice), 410–786–9004 (fax), or by e–mail at *kking@cms.hhs.gov*.

Administrative questions about the Demonstration to Improve the Direct Service Community Workforce grants may be directed to: Nettie Faulkner, Centers for Medicare & Medicaid Services, Acquisition and Grants Group, AGG/DRCG, Mail Stop C2–21–15, 7500 Security Boulevard, Baltimore, MD 21244–1850, 410–786–6639 (voice), 410–786–9088 (fax), or by e–mail at *nfaulkner@cms.hhs.gov*.

VIII. Other Information

CHART—2004 DEMONSTRATION TO IMPROVE THE DIRECT SERVICE COMMUNITY WORKFORCE GRANT AWARDS

State or other entity	Grant amount
Arkansas Department of Human Services, Little Rock, Arkansas	$680,000
Bridges, Inc., Gary, Indiana	1,403,000

CHART—2004 DEMONSTRATION TO IMPROVE THE DIRECT SERVICE COMMUNITY WORKFORCE GRANT AWARDS—Continued

State or other entity	Grant amount
Home Care Quality Authority, Olympia, Washington	1,403,000
Seven Counties Services, Inc., Louisville, Kentucky	680,000
Virginia Department of Medical Assistance Services, Richmond, Virginia	1,403,000

IX. Collection of Information Requirements

This notice informs applicants of the ''Demonstration to Improve the Direct Service Community'' that CMS has awarded 5 grants in FY 2003. Due to the extraordinary response received, CMS will not accept any new applications in FY 2004, but will continue to process the ranked applications submitted in FY 2003, beginning with the highest-ranked applications that were not funded in FY 2003.

This information collection requirement is subject to the PRA; however, it has already been approved under OMB control number 0938–0836 entitled ''Real Choice Systems Grants; Nursing Facility Transition/Access Housing Grants; Community Personal Assistance Service and Supports Grants, National Technical Assistance and Learning Collaborative Grants to Support Systems Change for Community Living'' with a current expiration date of 1/31/2007.

Dated: March 12, 2004.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–12172 Filed 5–27–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1266–N]

Medicare Program; Public Meeting in Calendar Year 2004 for New Clinical Laboratory Tests Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to discuss payment determinations for specific new Physicians' Current Procedural Terminology (CPT) codes for clinical laboratory tests. The meeting provides a forum for interested individuals to make oral presentations and submit written comments on the new codes that will be included in Medicare's Clinical Laboratory Fee Schedule for calendar year 2005 that will be effective on January 1, 2005. Discussion is directed toward technical issues relating to payment determinations for a specified list of new clinical laboratory codes. The development of the codes for clinical laboratory tests is largely performed by the CPT Editorial Panel and will not be discussed at the CMS meeting.

DATES: The public meeting is scheduled for Monday, July 26, 2004 from 10 a.m. to 4 p.m., e.s.t.

ADDRESSES: The meeting will be held at the Centers for Medicare & Medicaid Services (CMS) Auditorium located at 7500 Security Boulevard, Baltimore, Maryland 21244.

Registration: Registration Procedures: Beginning June 28, 2004 registration may be completed on-line at *http://www.cms.hhs.gov/paymentsystems*. The following information must be submitted when registering: name, company name, address, telephone number, and e-mail address. When registering, individuals who want to make a presentation must also specify for which new clinical laboratory test code(s) they will be presenting. A confirmation will be sent upon receipt of the registration. Registration Deadline: Individuals must register by July 22, 2004. If on-line registration is not used, individuals may register by phone at (410) 786–4601 or fax to the attention of Anita Greenberg at (410) 786–0169.

FOR FURTHER INFORMATION CONTACT: Anita Greenberg (410) 786–4601.

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Pub. L. 106–554, mandated procedures that permit public consultation for payment determinations for new clinical laboratory tests under Part B of title XVIII of the Social Security Act (the Act) in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases. The procedures and public meeting announced in this notice for new clinical laboratory tests are in accordance with the procedures published to implement section 531(b) of BIPA in the **Federal Register** at 66 FR 58743 on November 23, 2001. Also, section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, amended section 1833(h)(8)(B)(iii) of the Act to require that we convene a public meeting to receive comments and recommendations (and data on which recommendations are based) for establishing payment amounts for new clinical laboratory tests. The public meeting is intended to provide expert input on the nature of new clinical laboratory tests and receive recommendations to either crosswalk or gap-fill for payment. Decisions regarding payment for the newly created Physicians' Current Procedural Terminology (CPT) codes will not be made at this meeting. A summary of the new codes and the payment recommendations that are presented during the public meeting will be posted on our Web site by September 10, 2004 and can be accessed at *http://www.cms.hhs.gov/paymentsystems*. The summary will also display our tentative payment determinations, and interested parties may submit written comments on the tentative payment determinations by September 24, 2004 to the address specified in the summary.

II. Presentations

This meeting is open to the public. The on-site check-in for visitors will be held from 9:30 a.m. to 10 a.m., followed by opening remarks. Registered presenters may discuss and recommend payment determinations for specific new CPT codes for the 2004 Clinical Laboratory Fee Schedule. A newly created CPT code can either represent a refinement or modification of existing test methods or a substantially new test method. The newly created CPT codes for the calendar year 2004 will be listed at the following Web site *http://www.cms.hhs.gov/paymentsystems* on or after June 28, 2004.

Oral presentations must be brief, and must be accompanied by three written

copies. Presenters may also make copies available for approximately 50 meeting participants. Presenters must address the new test code(s) and descriptor, the test purpose and method, costs, charges, and a recommendation with rationale for one of two methods (crosswalking or gap-fill) for determining payment for new clinical laboratory codes. The first method, called crosswalking, a new test is determined to be similar to an existing test, multiple existing test codes, or a portion of an existing test code. The new test code is then assigned the related existing local fee schedule amounts and resulting national limitation amount. The second method, called gap-filling, is used when no comparable, existing test is available. When using this method, instructions are provided to each Medicare carrier to determine a payment amount for its geographic area(s) for use in the first year, and the carrier-specific amounts are used to establish a national limitation amount for following years. For each new clinical laboratory test code, a determination must be made to either crosswalk or to gap-fill, and, if crosswalking is appropriate, to know what tests to which to crosswalk.

III. General Information

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In order to gain access to the building and grounds, participants must bring a government-issued photo identification and a copy of their registration confirmation. Security measures include inspection of vehicles, at entrance to the grounds, and the requirement for persons to pass through a metal detector when entering the building. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection.

Special Accommodation: Persons attending the meeting who are hearing or visually impaired and have special requirements, or who have a condition that requires special assistance, must provide this information upon registering for the meeting.

Authority: Section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 1395hh)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 10, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–11240 Filed 5–27–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4069–N]

Medicare Program; Open Public Meeting To Discuss Definitions of Regions for Regional Medicare Preferred Provider Organizations and Prescription Drug Plans Under the Medicare Modernization Act—July 21, 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to provide beneficiaries, advocacy groups, managed care organizations, trade associations, potential prescription drug plans (PDPs), pharmacy benefit managers, providers, practitioners, and other interested parties an opportunity to ask questions and raise issues regarding options for the definition of regions for Medicare Advantage (MA) regional plans and PDPs under provisions of the Medicare, Prescription Drug, Improvement and Medicare Modernization Act of 2003 (MMA). The legislation requires that we implement these MMA provisions in 2006. The purpose of the meeting is to provide information about a variety of region definition options being considered both for regional MA plans and PDPs and to allow for public comment on these options.

DATES: *Meeting Date:* The meeting is scheduled for Wednesday, July 21, 2004 from 9 a.m. until 4 p.m., c.d.s.t. *Comment Deadline:* Written comments must be received by 5 p.m., August 5, 2004.

ADDRESSES: The meeting will be held in Chicago, IL, at the Rosemont Conference Center/Donald E. Stephens Convention Center, (located on the grounds of O'Hare airport) at 555 North River Road, Rosemont, IL. The phone number for the Rosemont Conference Center is (847) 692–2220. The meeting will be organized by CMS' contractor, RTI International.

Written Statements and Requests: We will accept written questions about meeting logistics or requests for meeting materials either before the meeting or up to 14 days after the meeting. Written submissions must be sent to: RTI International, ATTN: Nathan West, MPA, RTI Health Services and Social Policy Research, 3040 Cornwallis Rd. Research Triangle Park, North Carolina 27709, Telephone Number: (919) 485–2661, Fax Number: (919) 990–8454, e-mail: *medicaremeeting@rti.org*.

Public Comments: Public comments should be sent to Angela Porter via e-mail to *APorter@cms.hhs.gov* or fax to Angela Porter at (410) 786–9963; or you may mail public comments to her at the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: RTI International staff at *medicaremeeting@rti.org*, or Nathan West at (919) 485–2661.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare, Prescription Drug, Improvement and Modernization Act (MMA) of 2003 (Pub. L. 108–173, enacted on December 8, 2003) requires a number of changes to the Medicare program including the addition of Medicare prescription drug insurance plans (PDPs), as well as the addition of new regional Medicare Advantage (MA) plans. To implement both new programs, we must define appropriate regions for MA regional plans under section 1858(a)(2)(D) of the Social Security Act (the Act) added by section 221 of the MMA, and for PDPs under section 1860(D)–(11)(a) of the Act, added by section 101 of the MMA.

A. Medicare Advantage Regions

Title II of the MMA makes changes to the Medicare+Choice (M+C) program under Part C, which it renames as the Medicare Advantage program. Existing M+C plans, now known as MA plans, are now referred to as ''local MA plans''. Title II of MMA also establishes new MA regional plans, which would encourage private plans to serve Medicare beneficiaries in larger regions.

The new MA regional plan program will begin in 2006. The legislation calls for the creation of between 10 and 50 MA regions within the 50 States and the District of Columbia by January 1, 2005. Plans that opt to participate in the program are required to serve an entire MA region and are encouraged to offer services in more than one region. The legislation states that MA regions should maximize the availability of regional plans to all eligible individuals regardless of health status. The MMA conference report further clarifies these requirements by providing additional considerations for configuring the regions. To the extent possible, each MA region should include at least one State and not divide a State across regions.

Metropolitan Statistical Areas (MSAs) that span more than one State should be included in a single region. Furthermore, the conference report suggests that the required market study determine the best configuration of regions to maximize plan participation as well as the availability of plans to beneficiaries.

These statutory requirements and MMA conference report guidelines have several implications for the definition of MA regional areas. Geographic regions must be defined to meet multiple objectives and satisfy multiple constraints. Demographic data on the distribution of the aged population must be considered in conjunction with market factors that would impact insurance-supplier response. Incentives provided for in the legislation have the potential to offset unfavorable factors in the MA region and must also be considered in the analysis of these heterogeneous regions. In addition, the sizes and configuration of regions will themselves impact the entry behavior of plans.

B. Regional Definition for PDPs

Title I of the MMA establishes a prescription drug insurance benefit under a new Part D of Medicare and is intended to provide prescription drug coverage for beneficiaries enrolled in traditional Medicare FFS or MA plans. The law also provides for premium, deductible, and co-payment subsidies for certain low-income beneficiaries. The PDPs are effective in 2006.

To provide access to options for Medicare beneficiaries in all geographic areas, Medicare PDPs are intended to be regional in scope. Since private companies (with a public subsidy) will operate the PDPs, offering a plan in a region will be voluntary on the part of the plan operators. A plan must offer the same benefits and charge the same premiums and co-payments to all eligible beneficiaries in its region regardless of how the plan's costs vary within a region. If less than two full-risk plans are offered in a region (one of which must be a PDP), then we will approve any reduced risk plans that have applied to serve the region. In any regions or parts of regions that still lack two plans, we will arrange for a non-risk-bearing fallback plan to be offered.

The success of the Part D benefit will depend on the willingness of private plan operators to offer plans in the various regions and therefore, at least in part, on the region definitions selected by CMS. Implications for regional definition for PDPs include the trade-off of conforming to existing markets versus encouraging plan choice in areas projected to be underserved.

The MMA mandates that there be between 10 and 50 PDP regions. In addition, we will establish regions for the territories as required in section 1860D–11(a)(2)(C) of the Act. We must define these regions by January 1, 2005. The legislative guidelines for the definition of regions are the same for regional MA plans. The MMA requires that PDP regions be the same as with MA regions ''to the extent practicable.'' However, the PDP regions do not necessarily need to be identical to the MA regions if it can be shown that a different configuration of regions for PDPs improves beneficiaries' access to prescription drugs.

II. Meeting Topics and Format

The meeting will address the following topics:

- A presentation of proposed regional definitions for MA Regional Plans, followed by public comments and a question and answer period.
- A presentation of proposed regional definitions for PDPs, followed by public comments and a question and answer period.

Time for participants to ask questions or offer individual comments will be limited according to the number of registered participants.

The agenda will include presentations by CMS and RTI International (CMS'' contractor) staff. We are interested in an open dialogue on the topic of defining regions for regional MA plans and PDPs under the MMA legislation, and believe that an active discussion will help us more clearly identify the key issues for consideration. In this public meeting, we plan to engage in a discussion of the scenarios for MA regional and PDP region configurations, particularly on regional scenarios where PDP and regional MA definitions may, or may not, overlap.

III. Registration

Registration for this public meeting is required and will be on a first-come, first-served basis, limited to two attendees per organization up to the 1,000 person capacity of the meeting room. A waiting list will be available for additional requests. The registration deadline will be July 14, 2004. Registration can be accomplished through three mechanisms:

1. A special on-line meeting Web site set up specifically for this meeting: *https://register.rti.org/medicaremeeting/*.

2. A specific meeting e-mail address: *medicaremeeting@rti.org.*

3. By contacting Nathan West, RTI International, at (919) 485–2661.

A confirmation notice will be sent to attendees upon finalization of registration. Information on hotel accommodations will be provided to registered individuals as part of their confirmation notice. General information regarding meeting logistics will also be available on the meeting Web site at *https://register.rti.org/medicaremeeting/.*

Persons who are not registered in advance will not be guaranteed attendance due to space limitations. Attendees will be provided with meeting materials at the time of the meeting.

To submit written questions regarding logistics of the meeting or to requests material before the meeting, see instructions for *Written Statements and Requests* under the **ADDRESSES** section of this notice.

Written public comments are preferred following the meeting and will be accepted until August 5, 2004. See instructions for *Public Comments* under the **ADDRESSES** section of the notice.

(Authority: Sections 1851 through 1859 of the Social Security Act (42 U.S.C. 1395w–21 through 1395w–28)) (Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 19, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–12048 Filed 5–27–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CM–3130–N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—July 14, 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee (MCAC). This Committee provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary under the Medicare statute. The Committee will discuss and make

recommendations regarding using transmyocardial revascularization (TMR) and percutaneous myocardial revascularization (PMR) to treat severe angina.

Notice is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* The public meeting will be held on Wednesday, July 14, 2004 from 7:30 a.m. until 3:30 p.m. e.d.t., at the Holiday Inn Inner Harbor, 301 West Lombard Street, Baltimore, MD 21201.

Special Accommodations: For anyone attending the meeting who is hearing or visually impaired, or who requires special assistance or accommodations, please notify the Executive Secretary by June 25, 2004 (see **FOR FURTHER INFORMATION CONTACT**).

Presentations and Comments: Interested persons may present data, information, or views orally or in writing on issues pending before the Committee. Please submit written comments to Michelle Atkinson, by email at *matkinson@cms.hhs.gov* or by mail to the Executive Secretary, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C1–09–06, Baltimore, MD 21244.

Deadline for Presentations and Comments: Written comments must be received by June 25, 2004, 5 p.m., e.d.t.

Web site: You may access up-to-date information on this meeting at *www.cms.gov/coverage.*

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Executive Secretary, by telephone at 410–786–2881 or by e-mail at *matkinson@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee, which provides advice and recommendations to us about clinical issues. This notice announces a public meeting of the Committee.

Meeting Topic: The Committee will discuss the evidence, hear presentations and public comment, and make recommendations regarding the use of transmyocardial revascularization (TMR) and percutaneous myocardial revascularization (PMR) for treatment of severe angina. TMR is a surgical technique that uses a laser to bore holes through the myocardium of the heart in an attempt to restore perfusion to areas of the heart not being reached due to diseased or clogged arteries; PMR is a subset of this technique which is less invasive and is used as a late or last resort to relieve symptoms of severe angina in patients suffering ischemic heart disease who are not amenable to direct coronary revascularization interventions such as angioplasty, stenting, or open coronary bypass. Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.gov/coverage.*

Procedure: This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section of this notice, and submit the following by June 25, 2004, 5 p.m., e.d.t.: A brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each Committee member before offering your public comments. Your presentation must address the questions asked by CMS to the Committee. If the specific questions are not addressed your presentation will not be accepted. The questions will be available on the CMS Web site at *http://www.cms.gov/coverage/mcac.* We request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote, and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 6, 2004.

Sean R. Tunis,

Director, Office of Clinical Standards and Quality, Chief Medical Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 04–12049 Filed 5–27–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Assets for Independence Demonstration Program

Agency: Administration for Children and Families (ACF), Office of Community Services (OCS).

Funding Opportunity Title: Assets for Independence Demonstration Program.

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–EI–0027.

CFDA Number: 93.602.

Due Dates for Applications: July 27, 2004.

I. Funding Opportunity Description

The Administration for Children and Families, Office of Community Services (OCS) will accept applications from organizations seeking financial assistance to establish and administer Assets for Independence (AFI) Projects. These projects are designed to assist low-income people in becoming economically self-sufficient. They do so by helping clients learn about economic and consumer issues and establish matched savings accounts called Individual Development Accounts (IDA) in order to save for a first home, a business or higher education. Grant recipient organizations (grantees) will be required to use a portion of the Federal financial assistance to support information collection and other activities related to an on-going national evaluation of the impact of AFI Projects and IDAs.

Grantees must comply with requirements in this program's authorizing legislation, the Assets for Independence Act (AFIA) (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, as amended, Pub. L. 105–285, 42 U.S.C. 604 note). A copy of the Act is available at *http://www.acf.hhs.gov/assetbuilding/*

Program Purpose and Scope

The purpose of the Assets for Independence Program is to demonstrate and evaluate the effectiveness of asset-building projects that teach low-income families about financial issues and enable them to save earned income over the long-term in special matched savings accounts called Individual Development Accounts (IDA). The program is designed specifically to demonstrate and evaluate the effects of IDAs generally and AFI

Projects in particular in terms of increasing the economic self-sufficiency of low-income families; for promoting savings for first-time homeownership, post-secondary education, and small business or micro-enterprise development; and stabilizing and improving families and communities.

OCS seeks to support new and innovative AFI Projects administered by national, State-wide, regional and community-based organizations across the nation. The office is interested in supporting organizations that would establish first-time AFI Projects. OCS is also interested in providing financial support for organizations that are managing existing AFI Projects.

Examples of the types of organizations that may apply (if they meet all eligibility criteria) include, but are not limited to, community action agencies; community development corporations; financial institutions such as banks, credit unions, and community development financial institutions; faith-based and community organizations; State and local government agencies and other organizations; marriage strengthening coalitions; service and fraternal organizations; schools, colleges and universities; and consortia or groups of organizations that collaborate to administer an AFI Project.

Because ACF wants to see a broad range of project types, we are encouraging applications that address one or more of the following:

- Projects that serve communities and groups that are less represented among the current AFI Projects such as residents of rural areas and Native American individuals or communities.
- Projects designed in partnership with schools, colleges or universities to provide services to youth who are saving to attend higher education.
- Projects designed in partnership with area businesses and structured to provide services to the employees of those businesses.
- Projects designed in partnership with local agency that manages the Temporary Assistance for Needy Families program and/or other employment education and training offices and child support enforcement agencies.
- Projects administered by a consortium or group of organizations. In this arrangement, a lead organization receives the OCS funding and administers the overall AFI Project including the financial accounting services for the project, while the subsidiary organizations implement project activities and provide services to project participants in a defined locality or a certain target population in a region, State, city or other geographic area. OCS believes such consortia or collaborative arrangements may be particularly cost effective and efficient.
- Projects that involve local family strengthening coalitions and related organizations in an effort to integrate asset-building work with activities that promote healthy marriage and family formation. These activities may include, for example, communication skills training, marriage-oriented financial education, family budgeting, and marriage enrichment training. The goal for integrating asset building with healthy marriage projects is to link financial education with family budgeting abilities and marital communication skills that help to strengthen families and improve the communities in which families live. Furthermore, ACF is also encouraging applications that:
- Propose to enroll participants from households in which a child or children are living with the child's biological or adoptive parent or legal guardian;
- Propose to enroll individuals residing within relatively well-defined neighborhoods or communities that experience high rates of poverty or unemployment; or
- Propose a high proportion of cost-share funds committed from private sector sources.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $18,000,000.

Anticipated Number of Awards: 55.

Ceiling on amount of Individual Awards: $1,000,000 per project period and budget period.

An application received 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 Awards: None.

Average Anticipated Award Amount: $360,000 per project period and budget period.

Project Periods for Awards: 5 year (60 months) project period with 5 year (60 months) budget period.

III. Eligibility Information

1. Eligible Applicants

State governments or agencies; county governments or agencies; city or township governments or agencies including Public Housing Authorities; special district governments or agencies; independent school districts; Tribal governments as defined by section 4 of the Indian Self Determination and Education Act (25 U.S.C. 450b); Native Hawaiian organizations as defined by section 7912 of the Native Hawaiian Education Act (20 U.S.C. 7912); non-profits having a 501(c)(3) status with the Internal Revenue Service; faith-based organizations having 501(c)(3) status with the Internal Revenue Service; private institutions of higher education having 501(c)(3) status with the Internal Revenue Service; Low Income Credit Unions so designated by the National Credit Union Administration; Community Development Financial Institutions so designated by the U.S. Treasury; and other organizations.

Additional Information on Eligibility: State, Tribal County, or local governments, school districts, Public Housing authorities, and other governments or agencies are eligible only if they apply jointly with a non-profit organization having 501(c)(3) status that provides evidence of its IRS tax-exempt status.

Applications submitted by joint applicants, for example, by a State, local or Tribal government agency and a non-profit organization, must clearly identify the organizations that are the joint applicants. The required Standard Form 424 ''Application for Federal Assistance'' must be signed by an authorized representative of the joint applicant that will be responsible for grant administration and AFI Project implementation. The responsible applicant may be either the government agency or the non-profit organization.

Non-profit applicants applying for funding are required to submit proof of their 501(c)(3) non-profit status. Proof of this status is 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.

Low-Income Credit Unions and Community Development Financial Institutions are eligible to apply directly if they demonstrate a strong collaborative relationship with one or more local community-based organization(s) that seek to address poverty and the needs of community residents. Such community-based organizations may be non-profit organizations with or without 501(c) (3) status, philanthropic foundations such as community foundations, or for-profit organizations.

Applicant Low-Income Credit Unions and Community Development Financial Institutions may be a component of a State, local or Tribal government, or a

non-profit or for-profit organization including a faith-based organization.

Applicant Low-Income Credit Unions must submit official documentation that the National Credit Union Administration has designated the organization as such. For information about Low-Income Credit Unions, see *http://www.ncua.gov*.

Applicant Community Development Financial Institutions must submit official documentation that the U. S. Department of the Treasury has designated the organization as such. For information about designated organizations, go to *http://www.cdfifund.gov*.

Existing AFI Project grantees may submit applications for funding for new five-year projects. Such applicants will be reviewed competitively with all other applications.

Applications that exceed the ceiling on amount of individual awards will be considered non-responsive and will be returned to the applicant without further review.

Applications that fail to include the required non-federal cost share will be considered non-responsive and will be returned to the applicant without further review.

2. Cost Sharing or Matching

Grantees must provide or arrange for the provision of at least 50 percent of the total approved cost of the project from non-Federal sources. The total approved cost of the project is the sum of the Federal grant and the non-Federal share. The non-Federal cost share must be met by cash contributions. Therefore, a project requesting $350,000 in Federal funds must provide firm commitments of at least $350,000 of non-Federal contribution (50 percent of the total approved project cost of $700,000). Grantees will be held accountable for all non-Federal contributions described in their application even if they have demonstrated contributions that exceed the required minimum amount.

The basis for an applicant's meeting the cost-share commitment must be firm, and cannot be speculative. Applications without a firm cost-share commitment will not be evaluated.

A firm cost-share commitment may be shown by letters from contributing organizations, signed financial agreements, or other means. The firm commitments need not require full payment of the cost-share commitment at one time. Rather, for example, they may be a firm commitment to provide funding according to a well-defined payment schedule over the project period.

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*

Applicants that fail to follow the required format described in section IV.2 ''Content and Form or Application Submission'' will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the $1,000,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

Applications from non-profit applicants that fail to submit proof of their 501(3) non-profit status will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, Assets for Independence Program, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, Email: *ocs@lcgnet.com*; Telephone: (800) 281–9519; ATTN: Assets for Independence Program.

URL to Obtain an AFI Program Application Package: *http://www.acf.hhs.gov/assetbuilding/*.

Applicants are encouraged to use information provided in the AFI Program Application Package. The packages provide detailed information about AFI Program requirements and tips on developing a high quality project. The packages also include several worksheets that are useful for project planning and developing application materials. The packages are posted on the Internet at *http://www.acf.hhs.gov/assetbuilding/*. Applicants that use the work sheets may choose to include them as appendices to their application materials.

2. Content and Form of Application Submission

This subsection provides detailed instructions for developing the application. Please see Section V ''Application Review Information'' for additional relevant information.

Application Format

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grant.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number to register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurance and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grant.gov.

• We may request that you provide original signatures on forms at a later date.

• You may access the electronic application for this program on *www.Grants.gov*.

• You must search for the downloadable application package by the CFDA number.

To submit an application in paper format, please do the following.

Submit an original application and two additional copies. The original and copies must include all required forms, certifications, assurances and appendices. It must be signed by an authorized representative and have original signatures.

Applicants have the option of omitting from the copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Applicants who choose to submit the application materials in paper format are strongly encouraged also to provide an electronic copy on floppy disk or on CD–ROM in any standard formats such as MS Word, WordPerfect, and Adobe Acrobat.

Submit paper application materials on white 8½ by 11 inch paper only. Do not use colored, oversized or folded materials.

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. Also include page numbers for supplemental documents, including appendices. Please do not include organizational brochures or other promotional materials, slides, films, newspaper clips, and so forth.

Please present paper application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened with a slide paper fastener.

Page Limitation

The application package including sections for the table of contents, project abstract, and project narrative may not exceed 40 pages. The page limitation does not include required standard forms, assurances, certifications, disclosures and appendices. The page limitation also does not apply to any supplemental documents required in this announcement.

Application Content

Each application must include the seven components listed below. Applicants are strongly encouraged to submit materials that are responsive to guidance in this section and in the six evaluation criteria listed in this announcement. The ''Application Review Information'' section provides additional generic guidance that applies to all ACF competitive grant announcements, which applicants will find helpful.

1. *Table of Contents*—Numbered list of sections, sub-sections, and appendices with corresponding page numbers.

2. *Abstract*—Brief narrative that describes the project goals and objectives, the target populations or communities, the overall strategy or work plan, and information about the applicant and all participating organizations including financial institutions. List all sources of financial and in-kind support.

3. *Project Narrative*—Narrative that addresses all issues listed below and includes the following components and other matters noted in the ''Evaluation Criteria'' section of this announcement.

(a) *Goals and Objectives*—One or two broad statements of the overall desired goals of the proposed AFI Project, and a small number (4–6) of objectives that describe measurable outcomes the project is expected to produce in a given time period such as, (1) The increase in percentage of project participants who are homeowners; (2) The increase in the percentage of project participants who acquire postsecondary education; and (3) The increase in the percentage of project participants who create or expand a micro-enterprise. Applicants are encouraged to develop additional outcome statements that address their program's unique goals. These may focus on how the proposed project will enhance the overall AFI Demonstration and add to the national evaluation of the extent to which IDAs help reduce poverty.

(b) *Needs for Assistance and Strengths*—Description of the populations or communities to be assisted. Document needs in terms of geographic location, participant eligibility and other factors. Use indicators such as the following to document these ''other factors'': homeownership rates, education attainment, access to capital, use of Federal or State Earned Income Tax Credit or other refundable credits, use of financial institutions for saving or checking accounts, rates of reliance on public assistance or degree of reliance on check cashing services or other such financial services. Describe particular strengths of the proposed target populations or communities. For example, include important community organizations, degree of community cohesion or identity, meaningful involvement by area employers and significant investment in the target population or neighborhoods through other Federal, Tribal, State or local government programs or private sector or philanthropic initiatives.

(c) *Approach*—(i) Narrative Work Plan—Description of all significant planned activities for the project including those supported by the applicant and partner organizations throughout the 60-month project period. Describe all major elements and activities such as those listed below. (Provide estimates of the outputs for each activity.)

(A) Selecting and training key staff for the project.

(B) Developing strong collaborations with key government agencies, faith-based organizations, and non-profit and for-profit organizations that will support the overall asset building strategy.

(C) Establishing and maintaining the Project Reserve Fund.

(D) Developing protocols for managing the Project Reserve Fund account including a system for allocating interest income for project administration and to project participants.

(E) Establishing strong working relationships with one or more financial institution(s) that will participate in the project.

(F) Reaching out to community residents, employers and other key institutions about asset-building strategies in general and the IDA program in particular.

(G) Screening and selecting project participants.

(H) Determining the unique needs of each participant or group of participants including their needs for economic education, credit repair and other assistance, as well as determining their particular strengths.

(I) Providing economic education, credit repair, asset-specific information and other training or supportive services to participants.

(J) Developing savings plans with participants and working with them to save accordingly.

(K) Providing payments to project participants' IDAs as match for savings.

(L) Establishing and maintaining IDAs for each participant including specific

arrangements concerning the accounts with financial institutions or others.

(M) Assisting participants who have difficulty completing the economic education or abiding with the terms of their savings plan.

(N) Ensuring that clients use IDAs only as appropriate, including for emergency expenses.

(O) Ensuring that project participants purchase an eligible appreciable long-term asset within the program timeframes.

(P) Providing follow-up assistance to participants, if needed.

(Q) Providing required financial and programmatic reports to ACF.

(R) Participating actively in the national evaluation of the demonstration program including providing program data and other information as required.

(S) Managing periodic internal program reviews concerning staffing, participant successes, and other issues to be addressed.

(ii) Tax Preparation and Tax Credit Outreach—Description of planned strategies for assisting project participants with preparing annual tax returns and, if applicable, applying for Federal and State refundable tax credits such as the Earned Income Tax Credit and the Child Tax Credit.

(iii) Timeline—A 60-month project timeline that is consistent with the proposed budget, that reflects key activities outlined in the narrative work plan and that accommodates the requirement that all project participants complete their economic education, complete their savings plans and purchase an appreciable asset by the end of the project. Applicants are strongly encouraged to present the timeline in the format of a Gantt chart.

(iv) Planned IDA Match—Description of the plan for matching participants' saving in their IDAs including a description of the rationale for the match rate used for each of the three allowed asset purchases. For example, a description of the match rate for participants who will save for a first home and the rationale for choosing that rate. Include this information for each type of asset for which project participants will be allowed to save.

(v) Innovative Approaches—Description of innovative aspects of the proposed project. Describe how the proposed project will be supported by area employers or other private sector entities. Discuss any aspects that are unique or innovative for the target community or population and why each aspect is important to the overall success of the proposed project. Discuss strategies for using information technology for the project. Discuss using direct deposit for participant savings. If appropriate, discuss how the proposed project would be an important component of other significant and comprehensive neighborhood revitalization initiative(s) such as a Federal Empowerment Zone, Enterprise Community or Renewal Community project, Weed and Seed project sites or private sector or philanthropic initiatives.

(vi) Partner Organizations—List of public and private non-profit and for-profit organizations that will participate in any way in the proposed project. Provide a clear description of the roles and responsibilities of each organization including the role each will have in providing services for project clients and the degree to which they will have a role in managing the overall project. Describe how additional partners would be recruited throughout the project period.

If the applicant is the lead organization of a collaborative or group of organizations that will jointly administer the project, provide a description of each organization including details about each one's experience and staff capabilities. Also include a description of the lead agency's capacity and experience in managing multi-agency projects and the roles and responsibilities of each partner agency. Such applicants are strongly encouraged to provide copies of official partnering agreements signed by the participating organizations that clearly set forth each organization's roles and responsibilities for the proposed project.

Describe the partner relationship between the applicant (and partner organizations, if appropriate) and one or more Federally funded financial institution(s) where the Project Reserve Fund and participant Individual Development Accounts will be established and maintained. (If the applicant organization is a financial institution and it will be the depository of the Project Reserve Fund and participants' IDAs include a statement so indicating.)

4. *Results or Benefits Expected*—Explain how the project will produce results. Specify outcome and output statements that can be used as indicators of the extent to which each Objective listed under ''Goals and Objectives'' above are being achieved. Include participant-level and Agency-level output and outcome statements, as appropriate.

An outcome statement describes the result of the AFI Project's effort. Participant-level outcome statements may include, for example, the extent to which participants improve their credit history; file Federal and State tax returns and apply for Earned Income Tax Credit, Child Tax Credit or other refundable tax credits (if applicable); save earned income; gain assets, and become economically self-sufficient for the long term. Agency-level outcome statements may include: develop stronger positive relationships with partner service providers, area employers and financial institutions.

An output statement describes the goods and services produced which can be measured on a periodic basis (*e.g.*, quarterly). (The output statements should reflect the timing of activities and tasks listed in the project narrative and shown on the Gantt chart developed for the work plan.) Participant-level outputs may include the number of outreach activities completed; the number of participants recruited and enrolled; the number of financial education classes offered; number of asset-specific trainings offered; and so on. Agency-level output statements may describe the extent to which the AFI Project agency provides timely reports to ACF on financial and programmatic issues, as well as on providing information for the national evaluation.

5. *Evaluation Plan*—Description of a strategy for collecting and validating data for use in program management, monitoring and evaluation. Provide a statement that the applicant and any participating organizations will cooperate and participate actively with OCS in the national evaluation of the Assets for Independence Demonstration Program. Provide a statement that the applicant will use an electronic management information system for project data.

6. *Organizational Profile*—Description of the applicant organization. Describe the organization's capacity for and experience in developing and operating anti-poverty and asset-building projects. Discuss previous successes at working with the target populations and communities. Discuss the organization's experience in working closely with financial institutions, area employers, and other key organizations. Identify staff that will be responsible for managing and administering the project and discuss their relevant experience. Include copies of resumes or other summary information about the skills and capacity of each proposed key staff person. Also provide the following additional information:

(a) *Proof of Eligibility*—Provide required proof of eligibility for the applicant organization and, if relevant, partner organizations. See Section III

''Eligibility Information'' for more details.

(b) *Proof of Commitment of Non-Federal Cost Share*—One or more completed ''Non-Federal Contribution Agreement'' form(s) or statement(s) of commitment including information about the required contribution from private or non-Federal public sources.

7. *Budget and Budget Justification*—Provide completed Standard Forms and a narrative as follows:

(a) *Completed Standard Form 424*—Standard form that has been signed by an authorized official representative of the lead applicant organization.

(b) *Standard Form 424A*—Budget Information—Non-Construction Programs.

(c) *Narrative Budget Justification*—Narrative information about each object class category required under Section B, Standard Form 424A, including a description of reasonable funding amounts for actions, tasks and so forth.

Applicants have the option of omitting from the application copies (not the original) of specific salary rates or amounts for individuals specified in the application budget.

Required Standard Forms

Applicants must sign and return Standard Form 424, Application for Federal Assistance. The form must be signed and submitted with the application.

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications. Applicants must sign and submit the Form 424B with their application.

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 make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the web at *http://www.acf.hhs.gov/programs/ofs/forms.htm*

3. Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Standard Time) on July 27, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, Assets for Independence Program, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, ATTN: Barbara Ziegler-Johnson, Telephone: 1–800–281–9519.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

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, at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, Assets for Independence Program, 1815 Fort Meyers Drive, Suite 300, Arlington, Virginia 22209, ATTN: Barbara Ziegler-Johnson, Telephone: 1–800–281–9519.

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.

What to submit	Required content	Required form or format	When to submit
Table of Contents	A numbered list of sections, subsections and appendices included in the application materials.	Number each page sequentially ...	By application due date.
Project Summary/Abstract	Brief narrative that identifies the type of project, the target population and the major elements.	Consistent with guidance in the ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.
Project Narrative	A narrative that includes the following three sub-components and addresses issues described in the ''Application Review Information'' and the evaluation criteria listed in this announcement.	Consistent with guidance in the ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.
Project Narrative Component A—Goals and Objectives.	Narrative that describes the project goals for the proposed asset-building strategies. Also include objectives that describe measurable targets to be achieved.	Consistent with guidance in the ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.

What to submit	Required content	Required form or format	When to submit
Project Narrative Component B—Needs for Assistance and Strengths.	Narrative that describes the economic condition of the target populations and communities, with particular attention to the needs to be addressed and the strengths of the community that will bolster a successful program.	Consistent with guidance in the ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.
Project Narrative Component C—Approach.	Overall detailed project work plan	Consistent with guidance in ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.
Results or Benefits Expected	Projected results. Include outcome and output statements.	Consistent with guidance in the ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.
Evaluation Plan	Detailed information about the proposed strategy for collecting data for program management and evaluation.	Consistent with guidance in the ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.
Organizational Profile	Description of organizational and staff capacity, proof of eligibility and proof of commitment of non-Federal cost share.	Consistent with guidance in the ''Additional Information on Eligibility '' section, the ''Application Content'' sub-section and the evaluation criteria listed in this announcement.	By application due date.
Budget and Budget Justification and Standard Forms.	Budget information including: narrative budget justification; completed Standard Form 424; completed Standard Form 424A; completed Standard Form 424B.	Consistent with guidance in ''Application Content'' sub-section of this announcement. Required Standard Forms are posted on the Internet at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding lobbying	As per required form	Required Standard Forms are posted on the Internet at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding environmental tobacco smoke.	As per required form	Required Standard Forms are posted on the Internet at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Proof of Eligibility	As described in Section III. Eligibility.	Per description in Section III.	By application due date.

Additional Forms: Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at http://www.acf.hhs.gov/programs/ofs/forms.htm.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per optional form	Posted on the Internet at *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 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities that have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible

to alert them about the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

Comments should be submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, Assets for Independence Program, 1815 Fort Meyers Drive, Suite 300, Arlington, Virginia 22209, ATTN: Barbara Ziegler-Johnson.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html*.

5. Funding Restrictions

Grantees must adhere to all requirements of the AFI Act (''Act'') (Pub. L. 105–284, 42 U.S.C. 604 note). Some critical requirements are listed below.

As provided in the Act, section 404, an ''Individual Development Account'' is a trust or custodial account created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible AFI Project participant, or enabling the participant to make an emergency withdrawal. The Act imposes the following limitations, as follows:

(a) No contribution will be accepted for deposit into the IDA unless it is in cash or by check.

(b) The IDA trustee is a Federally-insured financial institution or a State insured financial institution if no Federally-insured financial institution is available.

(c) An IDA custodial account will be treated as a trust if the account assets are held by a bank or a person who demonstrates that they will administer the account consistent with the requirements of the Act and if the account would, except for the fact that it is not a trust, constitute an IDA as defined above.

(d) The assets of the IDA trust or custodial account will be invested in accordance with the direction of the AFI Project participant after consultation with the AFI Project grantee organization.

(e) The assets of the trust or custodial account will not be commingled with other property except in a common trust fund or common investment fund.

(f) Any amount in the trust or custodial account that is attributable to a deposit from the Project Reserve Fund may be distributed out of the trust or custodial account only for the purpose of paying the qualified expenses of the AFI Project participant.

(g) Any balance in the trust or custodial account on the day after the AFI Project participant dies shall be distributed within 30 days of that date as directed by the participant to another IDA established for benefit of another eligible individual.

As provided in the Act, section 404, there are certain limitations on the types of expenses for which the project participants may use their IDA resources. AFI Projects may allow participants to use IDA savings for any one or more of four expenses, as follows (subject to additional AFIA restrictions):

(a) Post-secondary educational expenses paid from an IDA account directly to an eligible educational institution. Educational expenses are, for example, tuition, fees, books, supplies and equipment.

(b) First-home purchase expenses for a qualified principal residence paid from an IDA account directly to the persons for whom the amounts are due.

(c) Business capitalization expenses paid from an IDA account directly to a business capitalization account that is established in a Federally-insured financial institution or State insured institution if no Federally-insured financial institution is available.

(d) Transfers to IDAs of family members.

As provided in the Act, section 407, there are certain limitations on the use of AFI grant funds. Consistent with these:

OCS will support qualified entities, other than a State or local government agency or a tribal government, that propose to establish a Project Reserve Fund in accordance with legislative requirements including that as soon as practicable after receipt of the award, the grantee will deposit in the Project Reserve Fund all cost-share funds provided to the grantee from any public or private source in connection with the AFI Project and the proceeds from any investments made, as allowed by the Act.

OCS will support programs that propose to use at least 85 percent of the sum of the AFI grant and the required non-Federal, cash cost-share contribution to make matching deposits to project participants' IDAs.

OCS will only support AFI Projects that propose to use no more than 15 percent of the AFI grant for the following three purposes:

(a) Assisting program participants in obtaining skills and information they need to achieve economic self-sufficiency. Typically, such activities include case management, credit counseling and economic education and training on budgeting and credit issues.

(b) Supporting program administrative activities. Typically, these include program management, staffing, facilities and rent, and supplies. They also include costs associated with complying with recruitment and enrollment of program participants and Federal reporting requirements. OCS will not support projects that propose to use more than 7.5 percent of the Project Reserve Fund for these functions.

(c) Participating actively in the national program evaluation and research. OCS will not support projects that propose to use less than 2 percent of the Project Reserve Fund for this function.

An applicant that proposes to use less than 5.5 percent of the Project Reserve Fund for purpose A above may apply up to an additional 2.5 percent of the Project Reserve Fund for purpose B.

Where more than one grantee jointly administers a project, or where an applicant is a consortium of organizations, each organization must use no more than its proportional share of the 15 percent for the three purposes.

As provided in the Act, section 408, individuals with the following qualifications are eligible to enroll as a participant in an AFI Project:

(a) Any member of a household that is eligible for assistance under the State Temporary Assistance for Needy Families program established under part A of title VI of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(b) Any individual whose household adjusted gross income is equal to or less than 200 percent of the poverty line (as determined by the Office of Management and Budget) or less than the earned income amount eligible for the Federal Earned Income Tax Credit

taking into account the size of the household (as described in section 32 of the Internal Revenue Code of 1986). In addition, an individuals' household net worth is no more than $10,000 (not including the value of the primary dwelling unit and one motor vehicle).

As provided in the Act, section 410, at least every three months, each AFI Project grantee shall make matching deposits into project participants' IDAs (or into a parallel account). The deposits must be made in equal amounts from Federal funds and non-Federal cost-share funds from the Project Reserve Fund. Deposits may also be made from interest income accrued on funds on deposit in the Project Reserve Fund and allocated for participant IDAs.

As provided in the Act, section 410, not more than $2,000 from an AFI grant shall be provided to any one project participant. Furthermore, no more than $4,000 from an AFI grant shall be provided to any one household over the course of the AFI Project.

OCS will only support programs for project and budget periods of five years. AFI Project grantees may expend funds during the five year project and budget period in keeping with program requirements.

OCS will not support programs that propose to use grant funds to support pre-award costs.

Prior to award of project funds, OCS will communicate with potential grantees to ensure that the proposed projects conform to all AFI Act requirements.

6. Other Submission Requirements

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families Office of Community Services Operations Center, Assets for Independence Program, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., Eastern Standard Time, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, Assets for Independence Program, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209. This address must appear on the envelope/package containing the application with the note ''Attention: Barbara Ziegler-Johnson.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax.

Electronic Submission: Please see Section IV.2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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 following section provides a general overview of the recommended contents of each applicant's project narrative. Following the general description are criteria specific to the AFI Program.

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.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example, such terms as the ''number of people served.'' When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Results or Benefits Expected

Identify the results and benefits to be derived. Explain how the project will reach the targeted population and how it will benefit participants or the community.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With

respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports, documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information.

A non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria

Evaluation Criterion I: Objectives and Needs for Assistance (Maximum: 10 Points)

Factor: Goal and Objectives Statements (5 Points)

The extent to which the applicant presents a clear goal statement supporting asset-building in general and IDAs in particular as strategies for helping low-income and low-wealth individuals and families become economically self-sufficient. The extent to which the applicant presents a small number of clear objective statements that describe anticipated targets or results of the project, including the following three objectives as long as they apply to the proposed project (These are linked to the national AFI Program goals.): (1) The increase in percentage of project participants who are homeowners; (2) The increase in the percentage of project participants who acquire postsecondary education; and (3) The increase in the percentage of project participants who create or expand a micro-enterprise. The extent to which the goals and objectives relate to the needs for assistance and strengths identified. The extent to which the applicant's goals and objectives reflect a commitment to the national demonstration of the AFI Program and IDAs as tools for reducing poverty.

Factors: Needs for Assistance and Strengths (5 Points)

The extent to which the applicant clearly identifies the target population and community(ies) or neighborhood(s) that will be the focus of the project, in terms of the geographic area, participant income, and other compelling information such as demographics, savings/assets acquisition, needs and strengths, and other factors. The extent to which the target population will include households in which a child or children is living with the child's biological or adoptive parent or legal guardian. The extent to which the project will enroll individuals residing within relatively well-defined neighborhoods or communities that experience high rates of poverty or unemployment.

Evaluation Criterion II: Approach (Maximum: 50 Points)

Factor: Work Plan and Timeline (25 Points)

(1) The extent to which the applicant presents a logical work plan with all major activities throughout the 60-month project period including any supported with non-Federal resources or provided by participating organizations. The extent to which the applicant provides a full and accurate description of the proposed use of the all requested financial assistance.

(2) The extent to which the applicant describes how the proposed project as a whole will operate from day to day, including responsibilities of the applicant and those of all participating organizations including the financial institutions.

(3) The extent to which the applicant proposes a 60-month project timeline that is consistent with the proposed budget that reflects key activities outlined in the narrative work plan and that accommodates the requirement that all project participants complete their economic education, complete their savings plans and purchase a qualified asset by the end of the project.

Factor: Tax Services (3 Points)

The extent to which the applicant proposes to provide tax preparation assistance and assistance for claiming refundable tax credits such as Federal and State Earned Income Tax Credit and the Child Tax Credit for project participants as part of the overall program.

Factor: IDA Match Rate (5 Points)

The extent to which the applicant proposes a clear and reasonable match rate or a menu of match rates for participants' IDAs that reflect the costs of eligible assets in the target community(ies). The extent to which the overall match rate strategy is reasonable in the context of other features of the proposed project.

Factor: Innovation (5 Points)

The extent to which the applicant proposes innovative strategies for vital issues such as recruiting participants, working with local partners such as employers and financial institutions and so forth. The extent to which the applicant includes strategies for enhancing financial education and financial literacy components of the program. The extent to which the applicant describes strategies for strong program administration through building partnerships with other organizations, using information technology, and arranging for direct deposits in project participants' IDAs. The extent to which the applicant describes how the proposed project would be a component of other significant and comprehensive neighborhood change projects supported by government agencies or private sector or philanthropic organizations such as Empowerment Zone, Enterprise Community, or Renewal Community projects, Weed and Seed project sites, and so forth. The extent to which the project will integrate asset-building work with activities that promote healthy marriage and family formation as a means of achieving safety, permanency, and well-being for children and families.

Factor: Partners/Collaborations (12 Points)

The extent to which the applicant describes the array of public and private organizations that will be involved in administering the project, the roles and responsibilities of each, and the process for recruiting additional partners throughout the project period. If the

applicant is the lead organization of a collaborative or group of organizations that will administer the project, the extent to which the applicant describes its capacity and experience in managing multi-agency projects and the roles and responsibilities of each participating organization. The extent to which the applicant describes its relationship with one or more Federally insured financial institution(s) where the Project Reserve Fund and participant Individual Development Accounts will be established and maintained and provides clear documentation such as partnership agreements listing the financial institution(s) commitments and role(s). The extent to which the project will secure cost-share funds from private sector sources.

Evaluation Criterion III: Results or Benefits Expected (Maximum: 10 Points)

The extent to which the application describes results the project will produce. The extent to which the explanation presents clear outcome and output statements that indicate progress in achieving the objectives (as stated in the Goals and Objectives section) for delivering asset-building services and in affecting the economic status of project participants and in the target community(ies).

Evaluation Criterion IV: Evaluation (Maximum: 5 Points)

The extent to which the applicant presents a clear strategy for gathering information for program management and for producing semi-annual and annual fiscal and program progress reports including using an electronic information system for managing project data including information about the status of participants, their savings, and so forth. The extent to which the applicant presents a clear commitment to participate actively in the national outcome and process evaluation of the overall AFI Program by providing relevant and timely data to OCS and by collaborating with OCS on evaluation activities throughout the project.

Evaluation Criterion V: Organizational Profiles (Maximum: 20 Points)

Factors:

(1) The extent to which the applicant provides clear and convincing information that it has needed capacity and relevant experience in developing and operating programs for addressing the causes and effects of poverty.

(2) The extent to which the applicant provides a clear management plan that describes the applicant agency and all partnering agencies and consortium members (where applicable); and an indication of what organizations will perform various project tasks such as recruiting, training, economic literacy training, and support activities.

(3) The extent to which the applicant identifies a Project Director and other program staff with relevant experience in addressing poverty issues and working with financial institutions, specific experience with the target population and experience with asset-building approaches in general and IDAs in particular.

Criterion VI: Budget and Budget Justification (Maximum: 5 Points)

The extent to which the applicant organization(s) provides a budget commensurate with the level of effort necessary to accomplish the goals and objectives of the project, and demonstrate that the estimated cost to the government is reasonable in relation to the anticipated results. The extent to which the applicant presents a detailed budget breakdown and a narrative justification for each of the budget categories in the SF–424A and reasonable funding amounts for program administration, economic education and other training and services for project participants.

1. Review and Selection Process

OCS Evaluation of Applications

Applications will undergo an initial OCS screening to ensure that they comply with the format requirements as outlined in this announcement. Applications that fulfill these requirements will be reviewed and rated by a panel based on the application content and evaluation criteria presented in this announcement.

The evaluation 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 OCS Director and program staff use review panel scores when considering competing applications. Review panel 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 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; OCS 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.

Additional considerations for applications that rank high include: (a) previous performance of the applicant; (b) the results of a pre-award site visit to assess an applicant prior to making a final determination on the grant award.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for the initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

2. Administrative and National Policy Requirements

Grantees are subject to the audit requirements in 45 CFR Parts 74 (non-governmental) or 92 (governmental).

3. Reporting Requirements

Programmatic Reports: All grantees are required to submit semi-annual program reports with the final report due 90 days after the project end date. Grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) with the final report due 90 days after the project end date. A suggested format for the program report will be sent to all grantees after the awards are made.

Special Reporting Requirements: All grantees are required to submit annual data reports. A suggested format for the program report will be sent to all grantees after the awards are made.

Original reports and one copy should be mailed to: Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW.,

Aerospace Building, Washington, DC 20447–0002.

VII. Agency Contacts

Program Office Contact: James Gatz, Office of Community Services, 370 L'Enfant Promenade, SW., Suite 500 West, Aerospace Building, Washington, DC 20447–0002, Email: *AFIProgram@acf.hhs.gov,* Telephone: (202) 401–4626.

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.gov.* Telephone: 1–800–281–9519.

VIII. Other Information

Additional information about this program, including Application Package and tips on developing a high quality project, is posted on the Internet at: *http://www.acf.hhs.gov/assetbuilding/.*

Dated: May 20, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–12129 Filed 5–27–04; 8:45 am]

BILLING CODE 4184–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner, Administration on Children, Youth and Families (ACYF), the following Authority:

1. Authority to carry out the provisions of the Family Violence Prevention and Services Act, 42 U.S.C. 10401 *et seq.*, and as amended, now and hereafter.

2. Authority to coordinate all programs involving family violence prevention and services within the Department of Health and Human Services; to seek to coordinate all other Federal programs involving family violence prevention and services; to provide for research; and to provide for training and technical assistance.

3. Authority to approve applications for Family Violence Prevention and Services grants authorized under the Family Violence Prevention and Services Act, 42 U.S.C. 10401 *et seq.*, and as amended, now and hereafter.

This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities. In addition, responsibilities under this Act are to be carried out in accordance with the requirements of section 307 of the Family Violence Prevention and Services Act, 42 U.S.C. 10406. (The Secretary has delegated to the Office for Civil Rights enforcement Authority under section 307.) Further, this delegation is null and void with respect to a Commissioner who, prior to appointment, has not had expertise in the field of family violence prevention and services.

I have affirmed and ratified any actions by the Commissioner, Administration on Children, Youth and Families or any other ACYF official which, in effect, involved the exercise of these authorities prior to the effective date of this delegation.

This delegation supersedes any previous delegation of authority pertaining to Family Violence Prevention and Services programs which could have been exercised by the Assistant Secretary for Children and Families or any designee thereof.

This delegation was effective on February 17, 2004.

Dated: May 18, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 04–12090 Filed 5–27–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0537]

Guidance for Industry and FDA Staff; User Fees and Refunds for Premarket Notification Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''User Fees and Refunds for Premarket Notification Submissions (510(k)s).'' This guidance describes the user fees and refunds associated with the 510(k) program. The guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''User Fees and Refunds for Premarket Notification Submissions (510(k)s)'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818.

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.* See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For device issues: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190 ext. 143.

For biologics issues: Leonard Wilson, Center for Biologics Evaluation and Review (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA), Public Law 107–250, amends the Federal Food, Drug, and Cosmetic Act (the act) to allow FDA to collect user fees for certain premarket reviews. The new law also permits refunds under certain circumstances. The guidance outlines the user fees due with 510(k) submissions and the circumstances in which FDA plans to provide refunds.

This guidance document is immediately in effect because the agency is already collecting user fees under the new law and wants to provide guidance to its stakeholders. On February 4, 2003, FDA published a notice in the **Federal Register** (68 FR 5643) to establish a public docket (02N–0534), so that we could share information on the implementation of MDUFMA and to provide interested persons an opportunity to share their views. On December 3, 2003, the agency held an open public meeting to update its stakeholders on its progress in implementing the new law, discuss some of MDUFMA's more challenging

provisions, and obtain input from interested parties. Since establishing the docket over a year ago, the agency has received quite a few comments from its stakeholders on a number of MDUFMA provisions, including the application and refund of user fees. During the drafting of this guidance, the agency specifically solicited comments to the docket in recognition of the interest in this issue. The agency has considered all comments received to date and believes that the approach presented below is a fair application of its refund policy. FDA will accept comments on the guidance at any time.

II. Significance of Guidance

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 user fees and refunds for 510(k)s. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''User Fees and Refunds for Premarket Notification Submissions (510(k)s)'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1511) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB No. 0910–0120).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–12103 Filed 5–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 14, 2004, 10 a.m.–5 p.m., EDT.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The full ACCV will meet on Monday, June 14, from 10 a.m. to 5 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–888–790–6041 on June 14 and providing the following information:

Leader's Name: Joyce Somsak.

Password: ACCV.

Agenda: The agenda items for June 14 will include, but are not limited to: a presentation on the Institute of Medicine's Immunization Safety Review Committee Report, ''Vaccines and Autism''; an overview of the Centers for Disease Control and Prevention's and the National Institutes of Health's research on thimerosal; an overview of the Vaccine Adverse Event Reporting System (VAERS) reports for influenza vaccine; a presentation on adding the influenza vaccine to the Vaccine Injury Table; and updates from the Division of Vaccine Injury Compensation, the Department of Justice, and the National Vaccine Program Office. Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Special Programs Bureau, Health Resources and Services Administration, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857 or by e-mail at *clee@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of his/her assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as time permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Special Programs Bureau, Health Resources and Services Administration, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2124 or e-mail: *clee@hrsa.gov.*

Dated: May 21, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–12082 Filed 5–27–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Special Diabetes Program for Indians Competitive Grant Program; New Request for Application of Funds

CFDA Number: 93.442.

Key Dates:

Letter of Intent Deadline: June 1, 2004.

Application Deadline: July 15, 2004.

Overview

The Indian Health Service (IHS) announces a new initiative under the Special Diabetes Program for Indians

(SDPI). This funding mechanism is a competitive grant program that will provide funding to selected SDPI grantees for a demonstration project to implement and evaluate defined activities in one of two areas (primary prevention of diabetes or prevention of cardiovascular disease in people with diabetes). The total amount of funding available is $23.3 million annually and the number of anticipated awards will be approximately 60 grants (30 for each demonstration project). Eligible applicants include grantees that have received SDPI funding. Applicants may submit one application per demonstration project (*i.e.*, primary prevention of diabetes or prevention of cardiovascular disease in people with diabetes). Therefore, while most programs will only submit one application for one demonstration project, some may choose to submit one application for each demonstration project, for a total of two applications. However, applicants will only be eligible to receive one award for funding for one demonstration project. Competing grant applications will be accepted with a receipt date of July 15, 2004. There will be only one funding cycle for the project period FY2005–FY2009. The anticipated start date for the awards will be September 29, 2004. Applications will be mailed to all current SDPI grantees on or before June 1, 2004, and will be available on request from the IHS Grants Management Branch and the IHS National Diabetes Program. The application will also be posted on the IHS National Diabetes Program website.

Awards will be subject to the availability of funds and grants will be administered in accordance with applicable Office of Management and Budget (OMB) Circulars, Department of Health and Human Services grant regulations at 45 CFR parts 74 and 92, the Public Health Service Grants Policy Statement, and other applicable IHS policies and procedures such as the regulations governing protection of human subjects at 45 CFR part 46.

This initiative is described in the Catalog of Federal Domestic Assistance Nos. 93.442. Sections 301(a) and 405 of the Public Health Service Act, as amended, authorize these awards, and these are administered under PHS grants policies and Federal Regulations 42 CFR parts 52c, 74, and 92.

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

I. Funding Opportunity Description

The Indian Health Service (IHS) has developed a new competitive grant program under the Special Diabetes Program for Indians (42 U.S.C. 254c–3). In response to Congressional direction (letter to IHS Director dated February 10, 2003) from Rep. George R. Nethercutt, Chair of the Diabetes Caucus for Congress, and subsequent Conference Language the purpose of this initiative is to provide funding to selected SDPI grantees for a demonstration project to implement and evaluate defined activities in each of two intervention areas (primary prevention of diabetes or prevention of cardiovascular disease in people with diabetes).

1. Background

Diabetes is a serious problem for American Indians and Alaska Natives (AI/AN), and the prevalence of diabetes is increasing over time in this population (Burrows, 2000). In 1997, Congress appropriated funding in the amount of $30 million per year for the Special Diabetes Program for Indians (SDPI) to the Indian Health Service for the prevention and treatment of diabetes in AI/ANs (Roubideaux, 2001). This program of grants to Indian Health Service (IHS), tribal and urban Indian health programs has resulted in over 300 diabetes prevention and treatment programs in Indian communities. In 2003, Congress increased the SDPI funding to $150 million per year and directed the IHS to use a portion of the increase in funding for a ''competitive grant program'' to fund grantees to implement activities in two areas: (1) Primary prevention of diabetes; and (2) cardiovascular disease risk reduction in people with diabetes. In 2003, the Director of the IHS held a tribal consultation meeting to gather input from tribes on the SDPI competitive grant program. The resulting program is described in this Request for Applications.

2. Primary Prevention of Diabetes

Research studies have recently shown that the risk of developing diabetes can be reduced in at-risk individuals through lifestyle changes and medication. The Diabetes Prevention Program, a randomized clinical trial funded by NIH, recruited 3234 individuals with Impaired Glucose Tolerance (IGT) to receive a lifestyle modification program, metformin or usual care. The study announced results in 2002 that the lifestyle modification program was associated with a reduction in the risk of diabetes by 58 percent. Metformin reduced the risk of diabetes by 31 percent (Knowler, 2002). Forty-five percent of participants were from minority groups, and 171 individuals in this study were American Indian. Importantly, the beneficial effects of these interventions were equal in all groups enrolled in the study, including American Indians. Other smaller studies have also shown that lifestyle changes can reduce the risk of developing diabetes, such as the Finnish and Da Qing studies (Pan XR, 1997; Tuomilehto J, 2001).

3. Cardiovascular Disease Risk Reduction

Individuals with diabetes are at risk for cardiovascular disease (CVD), and the incidence of CVD in AI/ANs now exceeds rates in the general population. The Strong Heart Study, a longitudinal cohort study of the risk factors for cardiovascular disease in American Indians, has demonstrated that diabetes is a major risk factor and accounts for the majority of risk for cardiovascular disease events in American Indians (Howard, 1999). The risk of cardiovascular disease in individuals with diabetes can be reduced through control of blood pressure, reduction in cholesterol levels, glycemic control, aspirin use, smoking cessation, physical activity and weight management (ADA, 2004).

4. Summary of Demonstration Projects

Eligible Applicants

SDPI grant recipients are eligible to apply for the SDPI Competitive Grant Program if they are one of the following entities:

A. Indian Health Service hospital or clinic
B. Federally-Recognized Tribes
C. Title V Urban Indian Health Programs
D. Consortium of any of the above

Non-profit Tribal organizations and Area Indian/tribal health boards are not eligible to apply for these grants, consistent with recent tribal consultation on this issue. These organizations may be funded by eligible entities to assist with the demonstration project.

Eligible entities may apply for one or both demonstration projects, but will only be funded for one project (primary prevention of diabetes or cardiovascular

disease risk reduction). Eligible entities may only participate in a consortium once for each demonstration project area (primary prevention of diabetes or cardiovascular disease).

Setting

Applicants must demonstrate the following:

- Minimum burden of diabetes in population served—applicants must submit information to show that the burden of diabetes in their community is significant and justifies funding for this demonstration project, such as the user population of their health program, the number of individuals in their diabetes registry, and any other descriptive data quantifying the problem of diabetes in the population served. In general, successful applicants will have at least a user population of 2500 and/or a diabetes registry of at least 250 individuals. Eligible entities that have a diabetes registry of less than 250 people are encouraged to form a consortium with other eligible entities. In general, the minimum size of a consortium should be a total combined user population of ≥ 2500 and /or a total combined diabetes registry ≥ 250.
- Prior success in diabetes prevention and treatment activities—applicants must demonstrate prior successful activities to prevent or treat diabetes, including a description of the activities, any evaluation or outcomes so far, and evidence of successful compliance with SDPI requirements.
- Basic health infrastructure to participate in project—the applicant must demonstrate that the following basic health infrastructure is in place or a plan for putting it into place with this funding mechanism:
- Clinical services—such as a health clinic or center
  - Laboratory—available for testing associated with the demonstration project.
  - Administrative and financial staff to manage and monitor the project.
  - Health professionals—on site health educator/diabetes educator, dietitian, physical activity specialist, full-time clerk/recruiter for this project, and physician consultant.
  - Pharmacist—available for project.
  - Data Coordinator—at least one person on site to manage data collection for the project and to report data to Coordinating Center.
  - RPMS site manager to use DMS, Lab, and Pharmacy packages.
  - Additional staff are recommended for each demonstration project:
  - Primary Prevention of Diabetes—diabetes educator and/or nurse to teach curriculum.
  - Cardiovascular Disease Risk Reduction—nurse case manager(s).

Structure

The overall structure of the SDPI Competitive Grant Program will include:

- IHS National Diabetes Program—general oversight, coordination and leadership of SDPI Competitive Grant Program.
- IHS Grants Management Branch—general oversight of grant administration, financial audits, monitoring and reporting.
- Grantees—approximately 30 grantees in each of the two demonstration projects, approximately 60 total grantees.
- Coordinating Center—responsible for day-to-day coordination of data collection, evaluation, and certain logistics related to the Competitive Grant Program activities.
- Resource Center—responsible for providing technical assistance to grantees, including availability of medical experts related to the activities of the project.

Organizational Chart for SDPI Competitive Grant Program

See Section VIII—Other Information.

5. Description of Each Demonstration Project

In the following section, the primary prevention of diabetes demonstration project will be described first in terms of the participants and planned activities. Then, the cardiovascular disease risk reduction demonstration project will be described in a similar manner.

Primary Prevention of Diabetes

Participant Eligibility, Recruitment, and Retention (Participants in demonstration project activities). Applicants must provide a plan for identifying, recruiting, screening and retaining individuals at risk for diabetes to participate in activities to prevent diabetes. Individuals recruited to participate in the activities of the primary prevention of diabetes demonstration project must meet the following criteria:

- Age > 18.
- At Risk for Diabetes/Pre-Diabetes—grantees will screen individuals at high risk for developing diabetes and recruit them to participate in activities to prevent diabetes as follows:
  - Screening for pre-diabetes—individuals with any of the following risk factors for diabetes or components of the Metabolic Syndrome will be identified and screened for pre-diabetes:
    - Family member with diabetes.
    - Prior diagnosis of gestational diabetes.
    - Any component of Metabolic Syndrome (Grundy, 2004):
    — Overweight or Obesity, especially abdominal obesity (BMI > 30; waist circumference > 40 inches in men and 35 inches in women; or waist:hip ratio > 0.9 in men, 0.85 in women).
    — Blood pressure ≥ 130/85 mm Hg or previous diagnosis of hypertension.
    — Fasting glucose ≥ 100 mg/dl.
    — Low HDL Cholesterol (< 40 mg/dl in men, < 50 mg/dl in women).
    - High Triglycerides (≥ 150 mg/dl).
  - While fasting blood glucose may be used for screening, the diagnosis of pre-diabetes will be by Oral Glucose Tolerance Test (2-hour blood glucose: 100–125 mg/dl = IFG; 140–199 mg/dl = IGT). For further information on the definition of pre-diabetes, see Section VIII—Other information.
  - Intensive activities—individuals who are screened and diagnosed with pre-diabetes [Impaired Glucose Tolerance (IGT) or Impaired Fasting Glucose (IFG)] will be recruited to participate in intensive diabetes prevention activities.
  - Less-Intensive, community/group activities—All Individuals with risk factors for diabetes, but not diagnosed with pre-diabetes, will participate in other less intensive diabetes prevention activities in the demonstration project.
  - Individuals with the diagnosis of diabetes are not eligible to participate in the diabetes prevention activities and should be referred to the local health facility for diabetes care services.
- Exclusion Criteria—individuals not eligible to participate in the activities of the demonstration project will include:
  - Current diagnosis of pregnancy.
  - Active alcohol or substance abuse by provider judgment.
  - End Stage Renal Disease on Dialysis.
- Recruitment of participants—grantees will develop strategies to recruit eligible individuals to participate in activities. Some of these activities may include:
  - Sending an invitation letter after identification of eligible individuals for possible participation using RPMS or other clinic records, consistent with HIPAA regulations.
  - Advertisements in local media sources, including radio, newspaper.
  - Recruitment during screening or health events in the community.
  - Targeted home visits to eligible individuals, perhaps by Community Health Representatives.
  - Recruitment activities will be further refined and clarified through a

collaborative process with grantees during the first (planning) year of the demonstration project.

- Target Number(s) of Participants

○ Primary Prevention of Diabetes—grantees will be required to recruit, screen and enroll individuals at risk for diabetes to reach minimum recruitment goals as follows: For the intensive activity, the 16-week DPP-Like curriculum will be taught on average twice a year for 12 people with pre-diabetes. The class can be taught twice in one week (same content) to help reduce attrition. For example, 12 people per class, times 2 classes per week, times 2 curricula per year, equals a minimum of 48 people participating in the intensive activity per year, 144–192 people over 3–4 years.

○ The exact target numbers of participants will be determined through a collaborative process with grantees in the first (planning) year of the demonstration project.

- Retention Plan

Grantees will meet in the first year (planning year) to discuss plans for retention of participants in a collaborative process.

Description of Primary Prevention Demonstration Project Activities. Grantees will be required to implement all components of the activities described below:

- Intensive Activities—individuals diagnosed with pre-diabetes will undergo an intensive diabetes education intervention similar to the Diabetes Prevention Program. The key components of this educational intervention include the following:

○ Initial physical exam and baseline weight, height, laboratory tests and other measures.

○ Intensive education curriculum—modeled after the DPP 16-week curriculum but using a group approach, taught by a diabetes educator and/or nutritionist and/or physical activity specialist, weekly for 16 weeks, then quarterly classes. Curriculum may be offered for an average of 12 individuals at a time, repeated once during week, so that the total number of participants averages 24 for the duration of the curriculum. The curriculum will be offered up to 3 times per year.

○ Individual coaching sessions—participants will meet with coach monthly during curriculum and quarterly thereafter to review progress, encourage retention, use tool box strategies for motivation/retention, and meet with family at least once.

- Less Intensive/Community/Group activities—individuals with pre-diabetes and those at risk for diabetes will participate in community based motivational activities such as monthly walks, health fairs, competitions, etc. Families can participate in these activities, and diabetes prevention awareness activities should be incorporated. This activity provides an opportunity for the grantees to tailor activities to community needs.

Cardiovascular Disease Risk Reduction

Participant Eligibility, Recruitment, and Retention (Participants in demonstration project activities). Applicants must provide a plan for identifying, recruiting, and retaining individuals with diabetes to participate in activities to reduce the risk of cardiovascular disease. Individuals recruited to participate in the activities of the cardiovascular disease risk reduction demonstration project must meet the following criteria:

- Age > 18.
- Diabetes and At Risk for Cardiovascular Disease—grantees will recruit participants who meet the following criteria:

○ Diagnosis of type 2 diabetes.

○ Individuals with the diagnosis of type 2 diabetes and any components of the Metabolic Syndrome and/or a prior history of CVD may serve as a special group in this project.

○ Intensive Activities—individuals with diabetes will be recruited to participate in an intensive clinical activity to reduce their risk for cardiovascular disease.

○ Less Intensive/Community Activities—Individuals at risk for diabetes and/or cardiovascular disease will be recruited to participate in community-based activities to raise awareness of the risk of cardiovascular disease in those with diabetes.

- Exclusion Criteria—individuals not eligible to participate in the activities of the demonstration projects will include:

○ Current diagnosis of pregnancy.

○ Active alcohol or substance abuse by provider judgment.

○ End Stage Renal Disease on Dialysis.

- Recruitment of participants—grantees will develop strategies to recruit eligible individuals to participate in activities. Some of these activities may include:

○ Sending an invitation letter after identification of eligible individuals for possible treatment using RPMS or other clinic records, consistent with HIPAA regulations.

○ Advertisements in local media sources, including radio, newspaper.

○ Recruitment during screening or health events in the community.

○ Targeted home visits to eligible individuals, perhaps by Community Health Representatives.

○ Recruitment activities will be further refined and clarified through a collaborative process with grantees during the first (planning) year of the demonstration project.

- Target Number(s) of Participants

○ Grantees will be required to recruit and enroll individuals with diabetes into this intensive activity to meet recruitment goals as follows: The minimum diabetes registry will be 250, therefore, the minimum number of people with diabetes to recruit is 150–200 over the duration of the project (50 people per year), after exclusions and attrition.

○ The exact target numbers of participants will be determined through a collaborative process with grantees in the first (planning) year of the demonstration project.

- Retention Plan

○ Grantees will meet in the first year (planning year) to discuss plans for retention of participants in a collaborative process.

Description of Cardiovascular Disease Risk Reduction Demonstration Project Activities. Grantees will be required to implement all components of the activities described below:

(1) Intensive Activities—individuals with type 2 diabetes will undergo an intensive, clinical and case management approach to reducing their risk factors for CVD. The key components of this activity include the following:

(a) Initial physical exam and baseline weight, height, laboratory tests, ECG and other measures.

(b) Intensive case management approach—this clinic/health center, team-based strategy to reducing risk factors for diabetes will include a case management approach in which key risk factors for CVD will be monitored and treated to recommended targets at monthly clinic visits. The strategies and targets will include:

i. (i) Blood pressure control (< 130/80) through diet and/or medication as indicated.

ii. (ii) Lipid reduction (LDL < 100; HDL > 40; Triglycerides < 150) through diet and/or medication as indicated.

iii. (iii) Glycemic control (A1C < 7.0) through diet and/or medication as indicated.

iv. (iv) Weight management/reduction including nutrition and physical activity (BMI < 30; Waist circumference < 40 inches in men, 35 inches in women).

v. (v) Smoking cessation in those who smoke.

vi. (vi) Aspirin use daily as indicated.

vii. (vii) Stress reduction/management as indicated.

viii. (viii) Clinic visits for individual treatment monthly (risk reduction

phase), then quarterly if targets met (risk maintenance phase).

ix. (ix) Flowsheets will be used to manage and monitor risk factors and treatment.

x. (x) Education on diabetes and CVD risk reduction—can occur in individual or group visits.

xi. (xi) Participants will follow a schedule of regular laboratory tests and other measures.

(2) Less Intensive/Community awareness activities—individuals identified to be at risk for diabetes or cardiovascular disease and the participants and their families will participate in community-based awareness activities that help educate the community on ways to reduce their risk of diabetes and/or cardiovascular disease. This provides an opportunity for the grantees to tailor activities to community needs.

6. Evaluation of Demonstration Projects

The Congressionally mandated evaluation of the SDPI Competitive Grant Program demonstration projects will include the following components:

A. Process Evaluation—documentation of the implementation of, and participation in, all activities.

B. Outcome Evaluation—the design of the outcome evaluation is dependent on the duration of the demonstration projects. Since the initiative is funded for only 5 years, with the first year being a planning year and the last year being partially a dissemination year, the duration of the actual demonstration project activities then will be approximately 3–4 years. Given this timeline, only short and intermediate outcome will be actively measured. Long term outcome (*e.g.*, changes in incidence and/or event rates) will be identified, codes will be established, and a tracking system will be developed within RPMS for evaluation beyond the 5 years of the project. Measurement will include comparisons over time (time series design) and comparisons between participants and non-participants (case-control design). Data collection will include primary data collection of key measures for each initiative and analysis of existing data including RPMS data (DM, Lab, Pharmacy packages) and the IHS Diabetes Care and Outcomes Audit. Evaluation measures will be further defined through a collaborative process in the first (planning) year and collection of data for certain measures will be required of all grantees. Key measures for each initiative may include:

(1) Primary Prevention of Diabetes—baseline and yearly OGTT, weight, height, BMI, waist circumference, waist-hip ratio, assessment of participation in physical activity, body fat measurement, blood pressure, lipid panel, knowledge of diabetes and its prevention, barriers and challenges to participation, food intake/exercise journals.

(2) Cardiovascular Disease Risk Reduction—baseline and quarterly A1C, blood pressure, lipid levels, weight, height, BMI, waist circumference, waist-hip ratio, liver/kidney function testing, smoking status, assessment of participation in physical activity, body fat measurement, knowledge of cardiovascular disease and its prevention, barriers and challenges to participation, food intake/exercise journals.

7. Participant Protections and Institutional Review Board Approval

Applicants must describe their procedures relating to Confidentiality, Participant Protection, the Protection of Human Subjects Regulations, and compliance with Health Insurance Portability and Accountability Act (HIPPA) regulations, using the guidelines provided below. Problems with confidentiality, participant protection and protection of human subjects identified during peer review of the application may result in the delay of funding. Further guidance on this topic is provided in the description of the content and format of the application—Section IV.

8. Report of Results and Dissemination of Effort

Given the importance of the outcomes of this demonstration project to future funding of the SDPI, particular emphasis will be placed on the timely and comprehensive reporting of results through a variety of mechanisms. These mechanisms include, but are not limited to: Internal NDP/IHS reports, regular briefings of the TLDC, Congressional testimony and supporting documentation, presentations to appropriate advocacy groups, other potential funding agencies, other SDPI grantees, I/T/U diabetes programs and scientific presentations/publications. Consistent with the government-to-government relationship between the federal government and tribes, all reports, presentations, and manuscripts for publications will be provided to the appropriate tribal or local organizational authority for review and approval prior to dissemination. However, by virtue of application under this announcement, and as a condition of award, grantees must agree to conduct said review within 30 days of notice of intent to disseminate. Failure to respond will be treated as concurrence and dissemination will proceed as proposed.

Given the diversity and need for culturally appropriate activities, some of the specifics of the project activities will be developed through a collaborative process in the first (planning) year. Grantees must agree to attend at least quarterly meetings in the first year, and at least one annual meeting thereafter. Applicants should include travel costs for these required meetings in their proposed budgets.

Timeline

PGY–01 (FY2005, FY2004 funding): Planning Year

PGY–02—PGY–4 (FY2006–2008, FY2005–2007 funding): Demonstration Project Activities

PGY–05 (FY2009, FY2008 funding): Dissemination/Training

II. Award Information

The SDPI Competitive Grant Program will provide funding for selected SDPI grantees to demonstrate the implementation of a set of defined activities in one of two areas:

A. Primary Prevention of Diabetes

B. Prevention of Cardiovascular Disease in People With Diabetes

The total estimated amount of funding available for each year of this initiative is $23.3 million and the number of anticipated awards will be approximately 60 grants. The expected amount of individual awards will vary based on the size of the program, and will range from $250,000 to $400,000 per year in total costs (direct and indirect costs combined). Applicants may request up to but no more than $400,000 in total costs (direct and indirect costs combined) per year in any year of the grant project. The actual amount may vary, depending on availability of funding, projected target numbers of participants, unanticipated program requirements, the number and quality of applications received, and the final judgment of the IHS National Diabetes Program. A sample budget is included in Section VIII—Other Information. Competing grant applications will be accepted with a receipt date of July 1, 2004. There will be only one funding cycle for FY2004–FY2008. The anticipated start date for the awards will be September 29, 2004. This funding will be awarded as a grant, renewable annually for up to 5 years. The IHS NDP will determine if grants are renewable after 5 years depending on funding levels and congressional actions. Therefore, awards may be requested for up to 5 years of support. Applicants should request the first year

as a planning year, and the next 4 years as full implementation of demonstration project activities. A sample budget is included in Section VIII—Other Information.

Awards under this initiative will be administered using the competing institutional grant mechanism of the IHS. The responsibility for planning, directing and executing the program, as well as data acquisition and analysis and evaluation of the proposed program, lies solely with the applicant organization. However the grantee must comply with IHS National Diabetes Program requirements for implementation of the intervention and the evaluation.

Annual continuation of awards will depend on availability of funds, grantee progress meeting goals and objectives, and timely submission of requested data and reports.

III. Eligibility Information

1. Eligible Applicants

Applicants eligible to receive an award under this announcement are SDPI grantees. The applicant must be one of the following:

A. Indian Health Service program (hospital or clinic)
B. Federally-Recognized Tribe
C. Title V Urban Indian Health Program
D. A Consortium of any of the above

If one of the above entities is sanctioned to serve as an applicant for more than one SDPI grantee(s), then a letter of support must be included in the application from each SDPI grantee the applicant is representing. The letter must specifically state that the applicant is officially representing that SDPI grantee in this application. Applicants for consortia who do not submit these letters of support at the time of the application receipt date will not be reviewed and are ineligible for the award. If an SDPI grantee sanctions a consortium to apply, that SDPI grantee may not submit another application by itself. Smaller applicants are encouraged to apply as a consortium, especially if their diabetes registry is < 250.

Applicants are strongly encouraged to establish eligibility of their proposed applications prior to submission. Inquiries about eligibility should be addressed to Mary Tso at the National Diabetes Program, (505) 248–4182.

Applicants that are not SDPI grantees are not eligible. Non-profit tribal organizations or national/area health boards are not eligible, consistent with recent tribal consultation on this issue.

Applications that do not meet these eligibility requirements will be returned to the applicant without further review.

2. Cost Sharing or Matching

The proposed application may include additional affiliated organizations to implement the activities of the demonstration project, and these organizations may include colleges or universities, additional tribes, or other Indian organizations/health boards. Applicants must include letters from these affiliated organizations indicating their agreement to participate in this project. The applicant must include information on any cost sharing and/or funding for subcontracts to these organizations in the budget.

Applicants must submit a letter indicating their agreement to work with the SDPI Competitive Grant Program Coordinating Center and comply with all requirements for implementation of the interventions and the collection of data for the evaluation. A sample letter is included in the application materials.

3. Other

Other Applicant Requirements

The applicant must be an SDPI grantee that has demonstrated prior compliance with SDPI grant requirements.

The Project Director, the individual responsible for the administration (including fiscal management) of the overall project, must have his/her primary appointment with the applicant organization. Special arrangements of employment, such as interorganizational personnel agreements, are permissible. The Project Director may be, but is not required to be, the Project Coordinator.

The Project Coordinator is the individual responsible for the day-to-day leadership and management of the activities within the project.

The Project Coordinator for the application must meet the following requirements:

- A relevant health professional degree.
- Experience with project management, including skills in project coordination, budgeting, reporting and supervision of staff.
- Working knowledge of diabetes, or a plan to receive relevant training.

Tribal Approval of Application/Letters of Support

It is the policy of the IHS that all projects involving AI/AN Tribes be approved by the Tribal governments with jurisdiction. Therefore, the following documentation is required as a part of this application:

- For a federally recognized Indian Tribe—a resolution of support from the Tribal government must be part of the application. Applications that involve more than one Indian Tribe must include resolutions of support from all participating Tribes.
- For an eligible consortium of Tribes—a resolution of support from each Tribe of the consortium must be included.
- For Title V Urban Indian health programs—a letter of support from the program's board must be included.
- For IHS hospitals or clinics—a letter of support from the Service Unit Director or Chief Executive Officer must be included.
- For all applicants—letters of support from all partners and collaborating entities.

Mechanism of Support

Awards under this initiative will be administered using the competing institutional grant mechanism of the IHS. The responsibility for planning, directing, and executing the program, as well as data acquisition and analysis and evaluation of the proposed program, lies solely with the applicant organization. The maximum grant period may not exceed five years, with the opportunity for a competing renewal at the end of that period if Congressional funding continues.

IV. Application and Submission Information

1. Address To Request Application Package

Applications will be sent to all SDPI grantees. Applications may be requested at the following addresses:

- Denise Clark, Grants Management Branch, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 100, Rockville, MD 20852–1627 (ZIP Code is unchanged for express/courier services), Telephone: (301) 443–5204.
- Area Diabetes Consultants within each IHS Area Office. Contact information for Area Diabetes Consultants is available on the IHS Web site at: *http://www.ihs.gov/MedicalPrograms/Diabetes/index.asp*.
- Applications will also be posted on the IHS National Diabetes Program Web site at: *http://www.ihs.gov/MedicalPrograms/Diabetes/index.asp*.

2. Content and Format of Application Submission

The application for this initiative must follow a required format that includes:

- SF 424 Application Forms; and
- Application Narrative and Supporting Documentation.

The order of the application must follow the format below:

- SF 424 Face page.
- Applicant contact and administrative information.
- DUNS Number—As of October 1, 2003, applications must have a DUNS and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as the Universal Identifier when applying for Federal grants or cooperative agreements. The DUNS number may be obtained by calling (866) 705–5711 or through the Web site at *http://www.dunandbradstreet.com/*. The DUNS number should be entered on the SF 424 face page. Internet applications for a DUNS number can take up to 30 days and this could cause organizations to lose opportunities to apply, or delay them. It is significantly faster to obtain one by phone. You will need the following information to request a DUNS number:
- Organization name.
- Organization address.
- Organization telephone number.
- Name of CEO, Executive Director, President, etc. (the person in charge).
- Legal structure of the organization.
- Year organization started.
- Primary business (activity) line.
- Total number of employees.
- SF 424A Budget pages—Summary budget by category (a more detailed, line-item budget is required below in Supporting Documentation listed below).
- Application Narrative: the applicant must include narrative (written) responses to the following questions/statements:
- Statement of Need (10 points).

■ State the demonstration project for which you are applying (primary prevention of diabetes or cardiovascular disease risk reduction—only one demonstration project per application).

■ Clearly identify yourself or your consortium as the applicant and indicate the basis for its eligibility under this initiative as described above in Section III.

■ Define the target populations that will receive and participate in the demonstration project and provide a rationale for selecting those target populations, as well as the geographic area to be served. (**Note:** Extensive demographic information is not required.) If you plan to focus on a specific segment of the at-risk community, explain why this is necessary or desirable. Include a description of Tribe(s) or communities served. If the applicant is a consortium, describe all partners and communities served.

■ Describe the burden of diabetes, the nature of the problem and extent of the need for the demonstration project in the target population(s). Documentation of need may come from quantitative as well as qualitative sources. The quantitative data could come from community assessments you or others have conducted, or from local data or trend analyses, diabetes registry numbers and/or IHS Diabetes Care and Outcomes Audit data. Qualitative sources could include focus groups and key informant interviews you or others have conducted with the targeted community, as well as anecdotal reports. Based on your quantitative and qualitative findings, discuss your understanding why and how your community or population served is affected by diabetes and the issues facing the targeted individuals, family members/significant others, and community.

○ Organizational and Community Readiness and Feasibility (10 points)

■ Discuss previous efforts to address the problem of diabetes in the community, the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience organizing and mobilizing the community, and providing relevant diabetes services, as well as culturally appropriate/competent services.

■ Describe your previous efforts at organizing and mobilizing the targeted individuals, families, and community (by your organization and/or others), and explain why you think the community is ready to participate in this particular approach to preventing diabetes or cardiovascular disease.

■ Describe the extent to which the community indicates support for your proposed project.

■ Describe the extent to which other stakeholders indicate support for your proposed project. Identify categories of stakeholders—for example, treatment and other professional groups, civic groups, governmental organizations, faith-based groups, and others—and discuss the role you expect them to play in the project. (You should include letters of support showing stakeholder interest in the project with this application).

○ Project Approach (30 points)

■ Clearly state the purpose, goals, and objectives of your proposed demonstration project activities. Describe how achievement of goals will produce meaningful and relevant results (*e.g.,* decrease the incidence of diabetes or cardiovascular disease, increase individual and community involvement; help increase healthy behaviors; increase support for sustained community awareness and involvement, *etc.*).

■ Discuss and explain the core values that will guide the implementation of project activities, and explain how each of these values will be operationalized. At a minimum, discuss each of the following as it relates to the proposed project: (a) Healthy lifestyles; (b) participatory process; (c) authentic community voice; (d) leadership development; and, (e) cultural context for engaging and involving individuals and community. You may identify and discuss other values important to your targeted individuals and community.

■ Describe how the demonstration activities will be implemented for the area you selected (primary prevention of diabetes or cardiovascular disease prevention) for both the intensive and community level activities as described in Section I. Funding Opportunity Description. Clearly explain each activity you plan to provide, in terms of mobilizing and engaging the community, screening eligible participants, and actual delivery of the activities. Demonstrate how the proposed activities will meet your goals and objectives.

■ Clearly state the unduplicated number of individuals you propose to serve (annually and over the entire project period) with grant funds. Applicants should propose to serve no fewer than 48 individuals with pre-diabetes per year for the primary prevention of diabetes project, or 50 individuals per year for the cardiovascular disease risk reduction project.

■ Describe how the target population will be identified, recruited, screened and retained.

■ Describe how the proposed project will address issues of age, race, culture, language, disability, literacy, and gender in the target population.

■ Describe how community members helped prepare the application, and how they will help plan, implement, and evaluate the project.

■ Discuss how you plan to develop effective partnerships with community organizations and other groups, so as to minimize duplication of services and perceived threats of encroachment on established ''territory.''

■ Describe the potential barriers to successful conduct of the proposed demonstration project and how you will overcome them.

○ Staff, Management, and Relevant Experience (30 points)

■ Provide a list of staff who will participate in the project, showing the role of each and their level of effort and qualifications. Include the Project

Director, Project Coordinator, and other key personnel as listed above (see Section 1, basic health infrastructure). Provide an organizational chart for the administration of the project. Describe any plans for recruitment of key personnel not already on staff in your health program.

■ Show that the necessary groundwork (*e.g.,* planning, consensus development, memoranda of agreement, identification of potential facilities) has been completed or is near completion so that the project can be implemented and the demonstration project can begin as soon as possible, and no later than 12 months after grant award. If applicable, identify any cash or in-kind contribution that you or your partnering organizations will make to the project.

■ Describe the resources available for the proposed project (*e.g.,* facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.

■ Provide a proposed timeline for Years 1–5 of the project (table, chart or graph), which corresponds to Year 1 (Planning Year) and Years 2–5 (Implementation of activities) showing key activities, milestones, and responsible staff. (**Note:** The timeline should be part of the Project Narrative. It should not be placed in an appendix). Please note that some details in the timeline may be modified after the collaborative process in the planning year; therefore, for this application, please propose a timeline for your activities.

○ Capacity Building (10 points)

■ Describe how the demonstration project activities supported by this grant will fit with other existing services or programs.

■ Describe how the proposed demonstration project will build upon and complement existing private, Tribal, and/or IHS services in your community.

■ Indicate the gaps that the demonstration project activities supported by this grant will fill or the manner in which they will extend/expand current efforts.

■ Identify new knowledge and skills that staff and local programs will acquire by participating in this demonstration project.

■ Describe strategies for sustaining the demonstration project activities beyond the project period if Congress does not continue funding for this initiative after 2008.

○ Evaluation and Data (10 points)

■ Document your ability to collect, manage, and report on required evaluation measures as outlined above (use examples listed in Section I). The IHS/NDP will provide the necessary protocols and forms for collecting and reporting data, so you do not need to include data collection forms in your application. Describe current use of RPMS, and whether you are using the RPMS packages such as pharmacy, laboratory and DMS. If you are not using RPMS, please describe your current health data system and its compatibility or comparability to RPMS.

■ In general terms, describe any experience in collecting similar data, in its quality control, and transfer to external programs such as the IHS/NDP.

■ Describe the local process for reviewing and approving all reports and publications based on data such as these.

Provide appropriate assurance/commitment as to compliance with the required review timelines.

○ Supporting Documentation:

■ Detailed Budget, for Years 1–5, to include the following items:

■ Staff/Personnel
■ Travel
■ Equipment
■ Supplies
■ Operational Costs
■ Consultant
■ Contractual
■ Total Direct Costs
■ Indirect Costs
■ Total Budget Amount
■ Budget Justification

■ **Note:** Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered. The final amount of the award will vary based on factors as detailed in Section II. A sample budget is included in Section VIII—Other Information.

○ Position descriptions of key personnel and CV/resumes of identified key personnel.

○ Required documentation, including:

■ Letters of support from key stakeholders

■ Tribal resolutions or equivalent (urban board, IHS SUD/CEO).

○ Assurances (SF424 Forms).

Participant Protection Plan

Applicants must describe their procedures relating to Confidentiality, Participant Protection, and Health Insurance Portability and Accountability Act (HIPPA) regulations, using the guidelines provided below. Problems with confidentiality, participant protection, and compliance with HIPPA regulations identified during review of the application may result in the delay or denial of funding.

All Applicants must address each of the following elements relating to confidentiality and participant protection. The application must briefly document how these requirements will be addressed or why they are not applicable.

○ Protect Clients and Staff from Potential Risks

• Identify and describe any foreseeable physical, medical, psychological, social, legal or other risks or adverse affects.

• Describe the procedures that will be followed to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide help if there are adverse effects to participants.

○ Fair Selection of Participants

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes pregnant women or other vulnerable groups.

• Explain the reasons for including or excluding participants.

• Explain how participants will be recruited and selected. Identify who will select participants.

• Please remember that the grant must be used to serve only those eligible under applicable statutes and regulations. If a Tribe contracting for IHS programs under the Indian Self-Determination and Education Assistance Act attempts to add this grant to the Title V funding agreement after award, an appropriate eligibility determination must be made by the Tribe and IHS before ineligibles may be served under 25 U.S.C. 1680c(b)(1)(B).

○ Absence of Coercion

Explain if participation in the project is voluntary or required.

• If the project plans to pay participants, state how participants will be awarded money or gifts.

• State how participants will be told that they may receive services even if they do not participate in the project.

○ Data Collection

• Identify from whom data will be collected. Describe the potential settings for data collection.

• Identify what type of specimens (*e.g.,* blood) will be used, if any. Describe how the material will be monitored to ensure the safety of participants.

○ Privacy and Confidentiality

• Explain how privacy and confidentiality will be ensured. Include who will collect the data.

• Describe:

■ Where data will be stored.
■ Who will or will not have access to information.
■ How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.
○ Adequate Consent Procedures
• List what information will be given to individuals who participate in the project. Notice given to participants must, at a minimum, include:
■ The individual's right to a genuine, free, and independent choice among eligible providers, that includes the individual's right to an alternative provider to which the individual has no religious objection.
■ A description of the data to be collected, how the data will be used, and how the data will be kept private.
■ The participant's right to leave the project at any time.
■ Possible risks from participation in the project.
■ Plans to protect participants from these risks.
• Explain how consent will be elicited from people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, written informed consent is necessary.

• Indicate if informed consent will be requested from participant. Describe how the consent will be documented. For example: Will consent forms be read? Will prospective participants be questioned to be sure they understand the forms? Will they be given copies of what they sign?

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases the project or its agents from liability for negligence.

• Risk Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

• Protection of Human Subjects Regulations

Applicants for the Competitive Grant Program are not required to address Protection of Human Subjects Regulations (45 CFR part 46). However, the IHS National Diabetes Program will conduct a cross-site evaluation of the Competitive Grant Program Grantee activities. The evaluation may require grantees to comply with the Protection of Human Subjects Regulations, consistent with an evaluation design to be developed. In that event, the IHS National Diabetes Program will assist grantees in obtaining Institutional Review Board (IRB) approval for their projects.

Additional information about Protection of Human Subjects Regulations can be obtained on the Web at *http://ohrp.osophs.dhhs.gov*. Applicants may also contact OHRP by e-mail *ohrp@osophs.dhhs.gov* or by phone (301) 496–7005.

• References—list any references cited in the application narrative

• Appendix items—include any additional required or supplementary materials not already included in the format for the application

The total length of the Application Narrative should not exceed 15 pages, typed, single spaced, in size 11–12 font in Arial or Times New Roman, with 1 inch margins, on 8 x 11.5 inch paper. The application should be assembled in the order as listed above.

Applicants must send the original application by mail to IHS Grants Management Branch and 2 copies of the application by mail to the IHS National Diabetes Program.

3. Submission Dates and Times

A. Letter of Intent Deadline: June 1, 2004

Prospective applicants are asked to submit a letter of intent that includes the selected demonstration project for the application (primary prevention of diabetes or prevention of CVD in people with diabetes), the name, address, and telephone number of the Project Director and its Project Coordinator, and the number and title of this RFA. The letter of intent must be received by the IHS National Diabetes Program, 5300 Homestead Rd, NE., Albuquerque, NM, 87110, telephone (505) 248–4182, FAX (505) 248–4188, e-mail: *mary.tso@mail.ihs.gov*, before 6 m.d.t. on June 1, 2004. Letters may be submitted by mail, fax or e-mail.

Although a letter of intent is not required, is not binding, and does not enter into the review of a subsequent application, the information that it contains allows the IHS staff to estimate the potential review workload and avoid conflict of interest in the review.

B. Application Due Date: July 15, 2004

The applications must be received before 6 p.m. m.d.t. on July 15, 2004. If an application is received after that date, it will be returned to the applicant without review. To be considered timely, an application must be received on or before the deadline date. No additional materials received after the deadline will be considered. Applications not meeting the deadline date specified in the announcement are considered late applications and will not be considered for funding under the announcement.

Receipt of applications will be acknowledged by postcard.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' A State approval is not required.

5. Funding Restrictions

Allowable Administrative Costs

Certain administrative costs for managing a comprehensive program are allowable and may vary, depending upon the size and complexity of the program's activities. The costs budgeted for this grant may not duplicate items already budgeted in other cost centers, such as Facilities and Administration (F&A) or ''Indirect'' cost pool. The grantee receiving the award must be prepared to provide documentation showing the direct relationship of proposed costs to the program, and that costs of this type are charged in a uniform manner.

Allowable Costs:

• Project Director, up to 25% effort
• Project Coordinator, up to 50% effort
• Project Director, Project Coordinator, and key personnel travel to 4 grantee meetings in the first (planning year) and 1 meeting per year during Years 2–5 in Albuquerque or another location determined by the Coordinating Center. Applicants should not assume that they will be able to drive to these meetings if the location of these meetings is not in Albuquerque. To ensure enough funding is budgeted for travel to grantee meetings, applicants may project costs assuming Washington, DC, is the location for these meetings.
• Limited salary support for secretarial or clerical help is allowable only when in direct support of the proposed project. For guidance, applicants should refer to the OMB Circular appropriate for them, A–87 (Cost Principles for State, Local, and Indian Tribal Governments), at *http://www.whitehouse.gov/omb/circulars* or A–122 (Cost Principles for Non-Profit Organizations), *http://www.whitehouse.gov/omb/circulars,* should contact the grants management officer under INQUIRIES.
• Data manager, up to 50% effort
• Other remaining key personnel as described above at percent effort

appropriate for scope of work at each site.

• Consortium and Contract Arrangements—subcontracts may be used to work with other entities to implement the project activities.

Unallowable Costs

• No construction activity is allowed.

Grantees will be allowed a reasonable period of time in which to submit required financial and performance reports.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment.

Continued failure to submit required reports may result in the imposition of special award provisions, or cause other eligible projects or activities involving the grantee organization, or the individual responsible for the delinquency to not be funded.

Failure to obtain prior approval for change in Scope, Project Director, Project Coordinator, undertaking any activities disapproved or restricted as a condition of the award, may result in fund restrictions or termination.

6. Other Submission Requirements

Submit a typed and signed original application, including appendices and supporting documents, in one package to:

Grants Management Branch, Indian Health Service, Reyes Building, 801 Thompson Avenue, Rockville MD 20852–1627 (ZIP Code is unchanged for express/courier services), Telephone: (301) 443–5204.

Also, at the time of submission, send 222214 additional single-sided photocopied and signed applications, including the appendices and supporting documentation to: IHS National Diabetes Program, Indian Health Service, 5300 Homestead Road, NE., Albuquerque, NM 87110, Telephone: (505) 248–4182, FAX: (505) 248–4188.

V. Application Review Information

Upon receipt, IHS will administratively review applications for completeness and responsiveness. Applications that are incomplete, non-responsive to this RFA, do not meet eligibility criteria or do not follow the guidelines of the SF 474 will be returned to the applicant without further consideration.

Applications will be evaluated for technical merit by appropriate peer review groups convened by the IHS National Diabetes Program in accordance with the criteria stated below.

1. Criteria

Priorities for funding will be based on the technical merit of the application, the assessed potential of the applicant and the likelihood of the applicant to successfully implement the defined interventions. Awards will be made only to applicants with financial management systems and management capabilities that are acceptable under PHS policy. Awards will be administered under the PHS Grants Policy Statement.

Applications will be reviewed and scored according to the quality of their responses to the requirements listed below for developing the application narrative. The number of points after each heading is the maximum number of points a review committee may assign to that section of the application narrative:

• Statement of Need (10 points).
• Organizational and Community Readiness and Feasibility (10 points).
• Project Approach (30 points).
• Staff, Management, and Relevant Experience (30 points).
• Capacity Building (10 points).
• Evaluation and Data (10 points).

Suggested content for each of the above sections of the Project Narrative are detailed in the application format section.

Reviewers will assess the application by considering the Application Narrative, Supporting Documentation, and Appendices.

2. Review and Selection Process

The IHS NDP will convene 2 review groups, one for each demonstration project in this initiative, which will consist of the following types of individuals:

• IHS staff.
• Tribal/Community representatives.
• Scientific experts.

The reviewers cannot be affiliated with any applicants.

The IHS National Diabetes Program will develop the review selection process consistent with the review criteria and will ensure appropriate representation of relevant expertise.

The Director of the IHS National Diabetes Program will make the final funding decisions in consideration of the following points, some of which were based on input from the Tribal consultation:

• The strengths and weaknesses of the application as identified by peer reviewers;
• The likelihood of success in implementation of the activities;
• Demonstrated capacity of the applicant for programmatic implementation;
• Availability of funds, and;
• Other factors based on Tribal consultation, including distribution of awards in terms of geography and balance among program size, program type (*i.e.*, IHS, Tribal, urban vs. rural, hospital vs. clinic, *etc.*).

3. Anticipated Announcement and Award Dates

Anticipated Selectee Date: August 30, 2004.

Anticipated Notice of Grant Award Date: September 29, 2004.

VI. Award Administration Information

1. Award Notices

Grants Management will not award a grant without an approved application in conformance with regulatory and policy requirements and which describes the purpose and scope of the project to be funded. When the application is approved for funding, the Grants Management Office will prepare a Notice of Grant Award with special terms and conditions binding upon the award and refer to all general terms applicable to the award.

2. Administrative and National Policy Requirements

None.

3. Reporting

The IHS NDP and the Grants Management Office have requirements for the progress reports and financial reports based on the terms and conditions of this grant. Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports, which are generally due annually. Financial Status Report (SF 269) is due 90 days after each budget period and the final SF 269 must have no unliquidated obligations and must indicate the exact balance of unobligated funds.

Grantees will be allowed a reasonable period of time in which to submit required financial and performance reports.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, or cause other

eligible projects or activities involving the grant recipient, or the individual responsible for the delinquency to not be funded.

Progress reports will be required on an annual basis.

VII. Agency Contacts

Questions on the SDPI Competitive Grant Program may be directed to: Mary Tso, National Diabetes Program, Indian Health Service, 5300 Homestead Road, NE., Albuquerque, NM 87110, Telephone: (505) 248–4182, FAX: (505) 248–4188, E-mail: *mary.tso@mail.ihs.gov.*

Questions on grants management and fiscal matters may be directed to: Denise Clark, Grants Management Branch, Indian Health Service, Reyes Building, 801 Thompson Avenue, Rockville MD 20852–1627, Telephone: (301) 443–5204, FAX: (301) 443–9602, E-mail: *dclark@hqe.ihs.gov.*

VIII. Other Information

1. Primary Prevention of Diabetes

Applicants are encouraged to learn more about the Diabetes Prevention Program through the following resources:

- Original journal article: Knowler WC, Barrett-Conner E, Fowler SE *et al.* Reduction in the incidence of type 2 diabetes with lifestyle intervention or metformin. New England Journal of Medicine 2002; 346:393–403.
- Diabetes Prevention Program Results Press Release: *http://www.niddk.nih.gov/welcome/releases/8_8_01.htm.*
- Diabetes Prevention Program website with study documents, including lifestyle manuals: *http://www.bsc.gwu.edu/dpp/index.htmlvdoc.*

2. Cardiovascular Disease Risk Reduction

- Applicants are encouraged to familiarize themselves with the American Diabetes Association Clinical Practice Recommendations: *http://www.diabetes.org/for-health-professionals-and-scientists/cpr.jsp.*

3. The Indian Health Service National Diabetes Program

- Mission Statement—The mission of the IHS National Diabetes Program is to develop, document, and sustain a public health effort to prevent and control diabetes in American Indian and Alaska Native peoples.
- Applicants are encouraged to refer to the IHS National Diabetes Program website for further information, such as the standards of diabetes care or best practices documents: *http://www.ihs.gov/MedicalPrograms/diabetes/index.asp.*

4. Definition of Pre-Diabetes

The term ''Pre-diabetes'' is a lay term that was coined as a simple way to describe a group of people who are at very high risk for diabetes. Translated to slightly more precise clinical terms, pre-diabetes is used to classify people with blood glucose levels that are higher than normal but not yet in the diabetic range have ''pre-diabetes.'' Pre-diabetes may be impaired fasting glucose (IFG) or impaired glucose tolerance (IGT), depending on the test used to diagnose it and the particular abnormality suffered by the patient. Not everyone with IGT has IFG, nor do all patients with IFG have IGT.

A fasting plasma glucose test measures plasma glucose after an overnight fast of at least 8 hours. This test is most reliable when done in the morning. Fasting glucose levels of 100 to 125 mg/dl are above normal but not high enough to be called diabetes. This condition is a form of pre-diabetes called impaired fasting glucose (IFG). IFG is considered a pre-diabetic state, meaning that the individual is more likely to develop diabetes but does not have it yet.

The oral glucose tolerance test (OGTT) consists of measures of plasma glucose levels after an overnight fast and after a glucose challenge. After a fast of 8 to 12 hours, blood glucose is measured before and 2 hours after drinking a glucose-containing solution, a glucola load of 75 grams or its equivalent. If the 2-hour blood glucose is within the range between 140 and 199 mg/dl, glucose tolerance is above normal but not high enough for diabetes. This condition, also a form of pre-diabetes, is called impaired glucose tolerance (IGT and, like IFG, it points toward a history of insulin resistance and a risk for developing diabetes.

5. Sample Budget

Applicants should submit a proposed budget for each year of this 5-year initiative. Year 1 will be a planning year, in which grantees prepare to implement activities. Years 2–5 will be for implementation of the proposed activities.

Applicants should include the following items in their budgets each year as appropriate for their selected area (primary prevention of diabetes or cardiovascular risk reduction) and activities.

- Personnel (may include funding for some or all of the following new staff and percent FTE for current staff to work on the demonstration project).
  - Project Director (up to 25%)
  - Project Coordinator (up to 50%)
  - Administrative Clerk/Recruiter (consider full time person)
  - RPMS Site Manager (only if not already funded by health program)
  - Health Educator/Diabetes Educator
  - Dietitian
  - Physical Activity Specialist
  - Pharmacist (CVD risk reduction)
  - Data Coordinator
  - Nurse Case Manager (CVD risk reduction)
  - Other

Funding for some of these positions may also be put in the consultant or contractual budget categories. Do not include funding for these positions if already paid through another source *i.e.* dietitian already on staff.

Include base salary, fringe benefits rate and amount, and total salary for each position.

- Travel (4 grantee meetings in Year 1, 1 grantee meeting each year in Years 2–5—assume Albuquerque and/or Washington DC for travel cost calculations).
- Equipment—as needed for project.
- Supplies (general office supplies, supplies needed for activities in project).
- Operational Expenses (consider incentives for activities, promotional items for both intensive and community based activities; consider buying computer equipment for this project, including internet access, for communication with Coordinating Center; other costs may include telephone, voice mail, computer support, shipping, copying, printing materials, etc).
- Consultants (for project staff if not already included in Personnel).
- Contractual (partners, collaborators).
- Total Direct (Sum of a–g).
- Indirect Costs (negotiated rate with BIA).
- Total Budget (Total Direct plus Indirect Costs).

6. Sample Participant Protection Plan

See Supplemental Instructions.

7. Organizational Chart for SDPI Competitive Grant Program

See Supplemental Instructions

8. Sample Letter of Support

See Supplemental Instructions.

9. References

American Diabetes Association. Standards of Medical Care in Diabetes. Diabetes Care 2004; 27, Suppl 1: S15-S35.

Burrows NR, Geiss LS, Engelgau MM, Acton KJ. Prevalence of diabetes among

Native Americans and Alaska Natives, 1990–1997: an increasing burden. Diabetes Care 2000 Dec; 23(12):1786–90.

Grundy SM, Brewer HB, Cleeman JI, *et al.* Definition of Metabolic Syndrome. Report of the National Heart, Lung and Blood Institute/American Heart Association Conference on Scientific Issues Related to Definition. Circulation 2004;109:433–438.

Howard BV, Lee ET, Cowan LD *et al.* Rising tide of cardiovascular disease in American Indians. The Strong Heart Study. Circulation 1999;99:2389–95.

Knowler WC, Barrett-Connner E, Fowler SE *et al.* Reduction in the incidence of type 2 diabetes with lifestyle intervention or metformin. New England Journal of Medicine 2002; 346:393–403.

Pan XR, Li GW, Hu YH, *et al.* Effects of diet and exercise in preventing NIDDM in people with impaired glucose tolerance: the Da Qing IGT and Diabetes study. Diabetes Care 1997;20:537–544.

Roubideaux Y, Acton K. Diabetes in American Indians. In: Dixon M, Roubideaux Y. Promises to Keep: Public Health Policy for American Indians and Alaska Natives in the 21st Century. American Public Health Association, 2001.

Tuomilehto J, Lindstrom J, Eriksson JG, *et al.* Prevention of type 2 diabetes mellitus by changes in lifestyle among subjects with impaired glucose tolerance New England Journal of Medicine 2001; 344:1343–1350.

Dated: May 21, 2004.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. 04–12083 Filed 5–27–04; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Producing Biliverdin

Michael L. Pendrak, David D. Roberts (NCI)

U.S. Provisional Application No. 60/554,369 filed 19 Mar 2004 (DHHS Reference No. E–040–2004/0–US–01)

Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

This invention details methods of use and composition of matter for preparing biliverdin. Biliverdin has been shown to have cytoprotective properties similar to bilirubin and can be used in the treatment of cardiovascular diseases, cancer, organ transplantation and other indications where inflammation occurs.

Incubating bilirubin with a bilirubin oxidase from various biological sources produces biliverdin. Like bilirubin, biliverdin has been shown to have these cytoprotective properties but is more soluble, reduced toxicity and as such, reduced side effects. Thus biliverdin is a safer alternative to bilirubin for therapeutic treatment of cardiovascular disease, cancers, inflammation and Alzheimer's in both human and non-human mammals.

The current technology involves methods of use and compositions of matter for the production and collection of biliverdin from microorganisms, including the yeast Candida albicans. Further claims include methods to enhance biliverdin production in microorganisms and use of biliverdin in the production of pharmaceuticals.

Vaccines Using Universally Inactivated Viruses, Parasites, and Tumor Cells

Yossef Raviv *et al.* (NCI)

U.S. Provisional Application filed 22 Mar 2004 (DHHS Reference No. E–303–2003/0–US–01)

Licensing Contact: Susan Ano; (301) 435–5515; *anos@mail.nih.gov.*

The current technology describes the universal inactivation of viruses, parasites, and tumor cells by hydrophobic, photoactivatable compounds. These non-toxic compounds, such as 1,5-iodoanpthylazide (INA), will selectively accumulate in the innermost regions of biological membrane bilayers, where the compounds will bind to proteins and lipids upon irradiation with light, thus inactivating deeply embedded proteins while maintaining integrity and activity of the proteins on the surface. This inactivation preserves the structural and conformational integrity and therefore immunogenicity of the agent in question, which overcomes a potential problem associated with some other vaccines such as those containing killed pathogens. Furthermore, the inactivation approach presented in this technology provides for a safe, non-infectious composition for vaccination against the corresponding agent, whereas some vaccines, such as those involving live-attenuated microbial agents, still have a risk of infectivity associated with them.

Quinoline Inhibitors of Retroviral Integrase

Drs. Yves Pommier and Christophe Marchand (both of NCI); Drs. Roberto Di Santo, Marino Artico, and Roberta Costi (all of Pharmacy University of Rome ''La Sapienza'')

U.S. Provisional Application filed 10 Mar 2004 (DHHS Reference No. E–187–2003/0–US–01)

Licensing Contact: Sally Hu; (301) 435–5606; *hus@mail.nih.gov.*

The subject invention describes certain diketo quinolin-4-1 derivatives and their use as integrase inhibitors in the treatment of HIV infection. The results of in vitro integrase inhibition studies show that these derivatives have significant anti-integrase activity (*e.g.*, an IC50 for strand transfer inhibition of not greater than 2 μM). Thus, these derivatives might be potentially important lead compounds for the development of integrase inhibitors. Since HIV integrase is an essential enzyme for effective viral replication, the development of such inhibitors of HIV integrase would thus potentially be useful and effective in the treatment of HIV infection.

Dated: May 21, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–12127 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Prevention Research and Epidemiology.

Date: July 20–22, 2004.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301–594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12148 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal informtion concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Behavioral Research in Cancer Control.

Date: July 12–13, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12153 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, PAR–04–036; Colorectal Cancer Screening in Primary Care Practice.

Date: June 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12154 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; 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 on Minority Health and Health Disparities.

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 the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 15–16, 2004.

Open: June 15, 2004, 8:30 a.m. to Adjournment.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, Advisory Council Subcommittee Reports, Health Disparities Reports/Collaborations, Update on the Sullivan Commission, and other Council business.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Closed: June 16, 2004, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Lisa Evans, JD, Senior Advisor for Policy, National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–402–1366, *evansl@ncmhd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12146 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; ZMD1, 03 NCMHD Endowment Programs.

Date: June 13–14, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Merlyn M. Rodrigues, PhD, MD, Medical Officer, National Center On Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd. Suite 800, Bethesda, MD 20894, 301–402–1366, *rodrigm1@mail.nih.gov.*

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12147 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Eye Council, June 10, 2004, 8:30 a.m. to June 11, 2004, 12 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on May 17, 2004, 69 FR 27930.

The meeting will be held on Thursday, June 10, 2004, one day only. The meeting is partially closed to the public.

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12150 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: June 23, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discuss sleep research and education priorities and programs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Carl E. Hunt, MD, Director, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 10138, Bethesda, MD 20892, 301/435–0199.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo ID and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's homepage: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12151 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Patient Safety Monitoring in International Laboratories.

Date: June 17, 2004.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Bethesda Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Marc L. Lesnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3264, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 594–6636, *ml436d@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12076 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Grant Application Review.

Date: July 26, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, PO Box 12233, MD ED–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Grant Application Review.

Date: July 26, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, PO Box 12233, MD ED–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12077 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: July 22–23, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I-40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233. MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143. NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12078 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Epidemiology of Interstitial Cystitis.

Date: July 20, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Proteomics and Matabolomics in Type 1 Diabetes and its Complications.

Date: July 27, 2004.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12079 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, June 16, 2004, 6 p.m. to June 17, 2004, 5 p.m., Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815 which was published in the **Federal Register** on May 17, 2004, 69 FR 27934.

The meeting will now be held July 6–7, 2004 at the same time and location. The meeting is closed to the public.

Dated: May 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12080 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Research Centers in Trauma, Burn and Perioperative Surgery.

Date: June 23, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Brian R. Pike, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18K, Bethesda, MD 20892, (301) 594–3907, *pikbr@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12144 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Reproduction, Andrology, and Gynecology Subcommittees.

Date: June 22–23, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12145 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes. The outcome of the evaluation will be a decision whether NIDDK

should support the request and make available contract resources for development of the potential therapeutic to improve the treatment or prevent the development of type 1 diabetes and its complications. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Type 1 Diabetes—Rapid Access to Intervention Development Special Emphasis Panel; National Institute of Diabetes and Digestive and Kidney Diseases.

Date: June 16, 2004.

Time: 10 a.m. to 5:30 p.m.

Agenda: To evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes and its complications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dr. Myrlene Staten, Senior Advisor, Diabetes Translation Research, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, NIH, 6707 Democracy Boulevard, Bethesda, MD 20892–5460, 301 402–7886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12149 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel NINR Loan Repayment Program Contract Proposals.

Date: May 28, 2004.

Time: 9 p.m. to 11 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12152 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Sciences Subcommittee.

Date: June 21–22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, North West, Washington, DC 20037.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12155 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 EE (20) Special Emphasis Panel.

Date: July 9, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Dorita Sewell, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Boulevard, Suite 409, MD 20892, 301–443–2890, *dsewell@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 EE (21–K24 Application Review.

Date: July 12, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAA/Fishers Building, MSC 9304, 5635 Fishers Lane, 3043, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Dorita Sewell, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Boulevard, Suite 409, MD 20892, 301–443–2890, *dsewell@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12156 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Multidisciplinary Clinical Research Career Development Program.

Date: June 23–24, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street, NW., Washington, DC 20004.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12157 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 21–22, 2004.

Time: 9:30 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: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852. (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: May 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12158 Filed 5–27–04; 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 of 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, Cardiovascular Differentiation and Development.

Date: June 9–10, 2004.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@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, DNA Damage and Repair.

Date: June 10–11, 2004.

Time: 8:30 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: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1016, *nayakrcsr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, NMB Member Conflicts.

Date: June 11, 2004.

Time: 11:30 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: 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: Center for Scientific Review Special Emphasis Panel, Tumor Microenvironment.

Date: June 14–15, 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: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mind, Body and Health.

Date: June 14–16, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, Md 20892, (301) 594–3163, *chapoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Salmonella.

Date: June 14, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SBTS 02M: Member Conflict.

Date: June 15, 2004.

Time: 5 p.m. to 5:30 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: Center for Scientific Review Special Emphasis Panel, The Immunology of Insect Vector.

Date: June 16, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Erythrocyte and Leukocyte Biology Study Section.

Date: June 17, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–2506, *tangd@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group Language and Communication Study Section.

Date: June 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

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: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.

Date: June 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

Date: June 17–18, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Biology and Diseases of the Posterior Eye Study Section.

Date: June 17–18, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: June 17–18, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group, Hematopoiesis Study Section.

Date: June 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Washington, DC 20814.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Hypersensitivity, Autoimmune, and Immune-mediated Diseases.

Date: June 17–18, 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: Bahiru Gametchu, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *gametchb@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology.

Date: June 17–18, 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: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microbial Pathogenesis.

Date: June 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Rolf Menzel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavior and Social Science Methods.

Date: June 17–18, 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: 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 Emphasis Panel, Small Business Innovation Research-Digestive Sciences.

Date: June 17, 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, 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, Cancer Therapy.

Date: June 17–18, 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: Suzanne Forry-Schaudies, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 3134, MSC, Bethesda, MD 20892, (301) 435–1119, *forryscs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery and Antimicrobial Resistance.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott-Embassy Row, 1600 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Tera Bounds, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3015–D, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *boundst@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Science: Children and Families Study Section.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioanalytical Engineering and Chemistry Panel.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn Hotel, 925 25th Street, Washington, DC 20037.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jurys Doyle, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group, Adult Psychopathology and Disorders of Aging Study Section.

Date: June 17, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *shirleym@csr.nih.gov.*

Name of Committee: Infectious Diseases and Mircobiology Integrated Review Group, Experimental Virology Study Section.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7808, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—A.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group, Biochemistry Study Section.

Date: June 17–18, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Four Points, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–3565, *svedam@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Mammalian Genetics Study Section.

Date: June 17–18, 2004.

Time: 9 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Learning and Memory.

Date: June 17, 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: 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: Center for Scientific Review Special Emphasis Panel, Parasites.

Date: June 17, 2004.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Auditory Systems.

Date: June 17, 2004.

Time: 1 a.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: Center for Scientific Review Special Emphasis Panel, Diagnostic Issues in Anxiety Disorders.

Date: June 17, 2004.

Time: 6 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Mariela Shirley , PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *shirleym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instruments for Nucleic Acid Analysis.

Date: June 17–18, 2004.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@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 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12081 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health; Notice of Availability of Recommended Performance Standards for In Vitro Test Methods for Skin Corrosion

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces the availability of recommended performance standards for in vitro test methods for skin corrosion. The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) developed the performance standards to communicate the basis by which a validated and accepted proprietary (*i.e.*, copyrighted, trademarked, or registered) or non-proprietary test method has been determined to have sufficient accuracy and reliability for a specific testing purpose. Performance standards should assist other test developers in the validation of test methods that are similar in structure and function and facilitate acceptance of test methods that adhere to applicable performance standards.

Availability of the Recommended Performance Standards

The recommended performance standards are available electronically in PDF format on the ICCVAM/NICEATM Web site at *http://iccvam.niehs.nih.gov* or in printed form by contacting Dr. William Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–3398, (fax) 919–541–0947, (e-mail) *iccvam@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION: ICCVAM previously reviewed and recommended four in vitro test methods for assessing the dermal corrosivity potential of chemicals: Corrositex®, EPISKIN™, EpiDerm™ (EPI–200), and the rat skin transcutaneous electrical resistance (TER) Assay (NIEHS 1999 and NIEHS 2002). Because three of these methods were proprietary, ICCVAM was asked by the U.S. Environmental Protection Agency (EPA) to develop and recommend performance standards that could be used to evaluate the acceptability of similar test methods that are based on similar scientific principles and that measure or predict the same biological or toxic effect.

ICCVAM in collaboration with the NICEATM announced the availability and sought public comment on proposed performance standards for these three types of test methods in July 2003 (**Federal Register**, Vol. 68, No. 126, pp. 39104–39105). Comments on the proposed standards were also obtained from the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) in August 2003 (NTP 2003) and the EPA Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel in October 2003 (EPA 2003). Following consideration of public and advisory committee comments, ICCVAM revised and approved recommended performance standards for the three types of in vitro corrosivity test methods.

This document will be forwarded, along with the final ICCVAM recommendations on the four test methods mentioned above, to Federal agencies for their consideration in accordance with the ICCVAM Authorization Act of 2000 (Pub. L. 106–545).

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from fifteen Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM promotes the development,

validation, regulatory acceptance, and national and international harmonization of toxicological test methods that more accurately assess the safety or hazards of chemicals and products and test methods that refine, reduce and replace animal use. The ICCVAM Authorization Act of 2000 (available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) established ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov.*

References

NIEHS. 1999. Corrositex®: An In Vitro Test Method for Assessing Dermal Corrosivity Potential of Chemicals. NIH Publication No. 99–4495. Available at *http://iccvam.niehs.nih.gov/methods/corrode.htm.*

NIEHS. 2002. ICCVAM Evaluation of EPISKIN™, EpiDerm™ (EPI–200), and the Rat Skin Transcutaneous Electrical Resistance (TER) Assay: In Vitro Test Methods for Assessing Dermal Corrosivity Potential of Chemicals. NIH Publication No. 02–4502. Available at *http://iccvam.niehs.nih.gov/methods/epiderm.htm.*

NTP. 2003. Summary Minutes of the August 12–13, 2003 Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). Available at *http://iccvam.niehs.nih.gov/about/sacatm/minutes/min_120803.pdf.*

EPA. 2003. Minutes of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel Meeting ''Ensuring Data Quality for In Vitro Tests Used as Alternatives to Animal Studies for Regulatory Purposes: A Consultation (October 28–29, 2003 in Arlington, VA). Available at *http://www.epa.gov/oscpmont/sap/2003/october/revisedmeetingminutes.pdf.*

Dated: May 20, 2004.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–12126 Filed 5–27–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Conference Call Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in June 2004.

The meeting of the Advisory Committee for Women's Services will include discussion around the activities of the Substance Abuse and Mental Health Services Administration involving substance abuse and mental health disorders affecting women, training of primary health care providers on the integration of primary care and mental health and substance abuse disorders. A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 12C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–1135.

Attendance by the public and public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date/Time: Open: June 8, 2004, conference call, 12 p.m.–1:30 p.m.

Place: 5600 Fishers Lane, Room 10–85, Rockville, MD 20857.

Contact: Nancy P. Brady, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C–26,Rockville, MD 20857. Telephone: (301) 443–1135; fax: (301) 594–6159 and e-mail: *nbrady@samhsa.gov.*

Dated: May 19, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–12124 Filed 5–27–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–22]

Notice of Proposed Information Collection: Common Request; Compliance Inspection Report and Mortgagee's Assurance of Completion

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* July 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated

collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Compliance Inspection Report and Mortgagee's Assurance of Completion.

OMB Control Number, if applicable: 2502–0189.

Description of the need for the information and proposal use: This is a request for an extension of a previously approved collection. Form HUD–92051, Compliance Inspection Report, is the document on which the property inspector or appraiser prepares his/her findings. The form provides categories for the inspector or appraiser to report the status of repair requirements on proposed construction cases. This report becomes a part of the case file and a copy is provided to the lender. Form HUD–92300, Mortgagee's Assurance of Completion, is completed by the mortgagee and assures HUD that the items set forth in the inspection report will be completed by the required date stated.

Agency form numbers, if applicable: HUD–92051 and HUD–92300.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection for the HUD–92051 form is 906,250; the number of respondents is 14,500 generating approximately 3,625,000 annual responses; the frequency of response is approximately 250 times each; and the estimated time needed to prepare the response is 0.25 hours.

The estimated number of burden hours needed to prepare the information collection for the HUD–92300 is 3,625; the number of respondents is 14,500 generating approximately 14,500 annual responses; the frequency of response is one time; and the estimated time needed to prepare the response is 0.25 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 21, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 04–12085 Filed 5–27–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–18]

Notice of Proposed Information Collection: Comment Request; Recertification of Family Income, Composition and Statistical Report—Section 235(b) and Section 234(b), (i), and (j)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Asset Management Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Recertification of Family Income, Composition and Statistical Report—Section 235(b) and Section 234(b), (i), and (j).

OMB Control Number, if applicable: 2502–0082.

Description of the need for the information and proposed use: Forms HUD–93101 and 93101A are submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The forms are also used by mortgagees to report statistical and general program data to HUD.

Agency form numbers, if applicable: HUD–93101 and HUD–93101A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 15,000; the number of respondents is 6,000 generating approximately 12,000 annual responses (one form HUD93101 and one form 93101–A); the frequency of response is at least once annually, and the estimated time needed to prepare the responses is from 20 minutes to 1.25 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 28, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 04–12182 Filed 5–27–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–21]

Notice of Proposed Information Collection: Comment Request; Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Room 6168, Washington, DC 20410, telephone number (202) 708–1320 ext. 5122 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped.

OMB Control Number, if applicable: 2502–0342.

Description of the need for the information and proposed use: The ''Notice to Tenants'' distributed to tenants identifying the requirement of the project owner to inform the tenant of the pet ownership approval, and the rules under which such approval will be granted when he/she is offered a dwelling unit. The pet rules established the requirements for the pet owner to register the pet with the project manager annually.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of respondents is estimated to be 9,000; the frequency of responses is 1; the estimated time to prepare the form is approximately .56 hours per response (a combined number based on various activities to include initial notice to tenants {.167 hours}, annual registration of pets {.25 hours}, consultation with tenants to establish {2 hours} and amend {1.25 hours} pet rules, and violations of pet rules {.167 hours}), and the total annual burden hours requested are 15,960.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 10, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.

[FR Doc. 04–12183 Filed 5–27–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–08]

Notice of Availability of Draft Environmental Impact Statement / Environmental Impact Report for the Marysville Hotel Demolition Project, City of Marysville, CA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the City of Marysville, CA, has prepared a Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) (EIS/EIR) for the Marysville Hotel Demolition Project located in Marysville, CA. The City of Marysville, CA, has prepared the draft EIS/EIR acting under its authority as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 42 U.S.C. 5304(g) and HUD regulations at 24 CFR 58.4, and under its authority as lead agency in accordance with the California Environmental Quality Act (CEQA). The draft EIS/EIR is a joint NEPA and CEQA document. The EIR will satisfy requirements of the CEQA (Public Resources Code 21000 *et seq.*) and State CEQA Guidelines (14 California Code of Regulations 15000 *et seq.*), which require that all state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. Because federal Community Development Block Grant (CDBG) funds (under Title I of the Housing and Community Development Act of 1974) would be used, the proposed action is also subject to NEPA. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. All interested federal, state, and local agencies, Indian tribes, groups, and the public are invited to comment on the draft EIS.

DATES: *Comments Due Date:* July 12, 2004. Comments are to be submitted to Gary Price, Community Development Coordinator at the below address.

ADDRESSES: Copies for review by the public will be available at the Yuba County Library at 303 Second Street, Marysville, CA. Copies of the document may be obtained from Copy City at 515 D Street, Marysville, phone (530) 743–8400, for the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Gary Price, Community Development Coordinator, City of Marysville Planning Department, PO Box 150, Marysville, CA 95901; telephone (530) 749–3902, Fax (530) 749–3991.

SUPPLEMENTARY INFORMATION: This notice seeks public input on issues that are addressed in the draft EIS/EIR and solicits input from potentially affected agencies and interested parties regarding the scope and content of the EIS/EIR. The Final EIS/EIR will be published and distributed after completion of the public comment period for the Draft EIS/EIS.

The proposed project site is the Marysville Hotel. The Marysville Hotel is located in the central business district of downtown Marysville on an approximately .5 acre lot at the northwest corner of the block bounded by 5th Street to the north, D Street to the east, 4th Street to the south, and E Street to the west. The site address is 418 5th Street (APN: 010–176–014–000). The City's Redevelopment Plan and General Plan both call for the removal of blight

from the downtown area and the redevelopment of buildings for commercial or mixed uses whenever possible. The purpose of this project is to remove a source of blight to improve the appearance of the downtown core and to redevelop the area either for parking or for mixed uses.

This environmental impact statement/environmental impact report (EIS/EIR) analyzes the environmental effects of the proposed Marysville Hotel Demolition Project (specifically Alternatives 1–3 and the No Project/No Action Alternative), and indicates ways to reduce or avoid potential environmental damage resulting from the project. As required, this EIS/EIR also discloses significant environmental effects that cannot be avoided, growth-inducing effects, effects found not to be significant, and significant cumulative impacts.

The following alternatives are considered:

- Alternative 1 (the proposed action): Demolition. The Marysville Hotel would be demolished.
- Alternative 2: Reuse for Mixed Commercial/Residential Use. The Marysville Hotel would be refurbished for reuse with commercial and residential uses.
- Alternative 3: Reuse for Commercial/Senior Affordable Housing. The Marysville Hotel would be refurbished for reuse with commercial and senior affordable housing uses.
- No Project—No Action. No action would be taken and the hotel would remain in its current condition.

The draft EIS/EIR addresses the following environmental issues: air quality, cultural resources, flood hazard, noise, toxics, traffic, land use and environmental justice.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: May 20, 2004.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 04–12088 Filed 5–27–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–C–02]

Notice of HUD's Fiscal Year (FY) 2004, Notice of Funding Availability (NOFA), Policy Requirements and General Section to FY2004 SuperNOFA for HUD's Discretionary Grant Programs; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; correction.

SUMMARY: On May 14, 2004, HUD published its Fiscal Year (FY) 2004, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. This document corrects the reference to a form that was misidentified in the Housing Choice Voucher Family Self-Sufficiency Program Coordinators program section of the SuperNOFA. This document also substitutes the form that follows the Housing Opportunities for Persons with AIDS (HOPWA) program section of the SuperNOFA with a revised form that has been approved by OMB.

DATES: All application due dates remain as published in the **Federal Register** on May 14, 2004.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Office of Administration, Room 2182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–0667 (this is not a toll-free number). Hearing or speech impaired persons may access this number by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On May 14, 2004 (69 FR 26941), HUD published its Notice of HUD's Fiscal Year (FY) 2004, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The FY2004 SuperNOFA announced the availability of approximately $2.3 billion in HUD assistance administered by HUD offices.

This notice published in today's **Federal Register** makes a technical correction with respect to a form referenced in the Housing Choice Voucher Family Self-Sufficiency Program Coordinators program section of the SuperNOFA that was misidentified as the ''HUD–424.'' The correct reference is ''SF–424.''

This notice published in today's **Federal Register** also makes a technical correction with respect to the form that follows the HOPWA program. Specifically, this notice removes from Appendix A of the HOPWA section of the SuperNOFA the form entitled, ''HOPWA Renewal of Permanent Supportive Housing Grants'' (HUD–40110–B) (04/2004). The information collection authority for this form has expired and the form was inadvertently included in the SuperNOFA. In place of the expired form, this notice also substitutes the form entitled, ''HOPWA Renewal of Permanent Supportive Housing Grants Form 2004'' (HUD–40110–B) (04/30/2007). A copy of the approved form follows.

Correction

Housing Choice Voucher Family Self-Sufficiency Program Coordinators Program Section of the SuperNOFA, Beginning at 69 FR 27393

On page 27398, right hand column, paragraph B1 entitled, ''Content of Application,'' the fourth sentence is corrected to read, ''Both new and renewal PHA applicants should enter the proposed ACC amendment effective and ending dates for the FSS coordinator funding in section 13 of the SF–424.''

Housing Opportunities for Persons With AIDS Section of SuperNOFA, Beginning at 69 FR 27631

On page 27643, HUD removes from Appendix A of the HOPWA section of the SuperNOFA the form entitled, ''HOPWA Renewal of Permanent Supportive Housing Grants'' (HUD–40110–B) (04/2004).

At page 27643, Appendix A of the HOPWA section of the SuperNOFA is amended by adding the form entitled, ''HOPWA Renewal of Permanent Supportive Housing Grants Forms 2004 (HUD–40110–B) (04/30/2007),'' a copy of which follows.

Dated: May 19, 2004.

Vickers B. Meadows,

Assistant Secretary for Administration/Chief Information Officer.

BILLING CODE 4210–32–P

OMB Approval No. 2506-0133
(exp. 04/30/2007)

SuperNOFA
HOPWA RENEWAL OF PERMANENT SUPPORTIVE HOUSING GRANTS FORMS 2004

Sponsored by the
U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Office of HIV/AIDS Housing

The information collection requirements contained in this notice of funding availability will be used to rate applications, determine eligibility, and establish grant amounts.

Selection of applications for funding under the **HOPWA Program** is based on the rating factors for this program listed in the SuperNOFA for Housing and Community Development Programs.

Public reporting burden for the collection of information for the **HOPWA Program** is estimated to average 60 hours for this application, including 38 hours on completing the attached forms per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001,1010,1012; 31 U.S.C. 3729,3802)

U.S. Department of Housing
and Urban Development

Appendix A

HOPWA Renewal Checklist

Checklist of Exhibits (for forms, see general section * or (A) as attached to this appendix)

Please insert page numbers

- ☐ Transmittal Letter (that identifies the HOPWA renewal amount requested)--optional
- ☐ Application for Federal Assistance (Form SF-424)*
- ☐ Executive Summary and Synopsis
- ☐ HOPWA Renewal Project Information-(A)
- ☐ Organizational Capacity Narrative (if applicable due to new or changed sponsor and updated nonprofit status, if applicable
- ☐ Provision of Permanent Supportive Housing Narrative
- ☐ HOPWA Need for Renewal Chart (A)
- ☐ Achieving Results and Project Evaluation Narrative (include required output and outcome measures in Logic Model, form HUD-96010)*
- ☐ HOPWA Renewal Budgets -- Total Grant and for each Project Sponsor (A)
- ☐ Documentation of Match for Supportive Services
- ☐ Statutory Certifications * (Consistency with the Consolidated Plan HUD-2991; Applicant Assurances and Certifications HUD-424B; RC/EC/EZ Strategic Plan HUD-2990-if applicable; Disclosure Report HUD-2880; and Lobbying Activities Disclosure SF-LLL)
- ☐ HOPWA Applicant Certification (on Fair Housing, Facility Use Periods and Environmental requirements) (A)

HOPWA Renewal Project Information Form

A. Grant Number

Provide the grant number and term of the HOPWA grant for which you are seeking renewal.

Grant Number		**Grant agreement term (m/d/y) and any amendment:**	to as amended to

B. Service Area. Please identify the grant service area, i.e., the name of the community or metropolitan area, or, if activities are being undertaken in a state-wide or regional basis:

C. Project Sponsors and Sites. On a separate page, if needed, identify all the project sponsors that are involved in your renewal project, the sponsor's mailing address, telephone, email address, fax number, and the name of a contact person and status as a faith-based organization and/or grass roots organization.

Is the sponsor a faith-based organization? ☐ *Is the sponsor a grass roots organization?* ☐	*Is the sponsor a faith-based organization?* ☐ *Is the sponsor a grass roots organization?* ☐
Is the sponsor a faith-based organization? ☐ *Is the sponsor a grass roots organization?* ☐	*Is the sponsor a faith-based organization?* ☐ *Is the sponsor a grass roots organization?* ☐

Faith-based organization. For information on HOPWA project sponsors, the term faith-based organization means organizations that are religious or faith-based community organizations which are eligible to participate in the HOPWA program on the same basis as any other organization, as established by 24 CFR 574.300(c).

Grass-roots organization. For information on HOPWA grantees and project sponsors, the term grass roots organization means the organization is headquartered in the local community to which it provides services; it has a social services budget of $300,000 or less annually; and it has six or fewer full-time equivalent employees. Local affiliates of national or larger community-based organizations are not considered "grassroots."

Are new project sponsor(s) being added to the renewal project? Yes ☐ / No ☐
Please note you must provide an Organizational Capacity Narrative if a new project sponsor is added or a change is being proposed to your renewal project. If yes, attach updated or applicable nonprofit status information.

Sites. For projects involving sites, for example, a structure where HOPWA funds will be used for operating costs, and/or project-based rental assistance, please provide the address of the site.

Confidentiality. Please indicate if the site location is confidential or a public site by checking the appropriate box below.

☐ Confidential Site.
(Do not release the street location of this project.)

☐ Public Site.
(The address may be released to inform clients and the public.)

Photo. Please attach a photograph of the structure.

D. Summary of Proposed Accomplishments—Housing Outputs.

Summary of Housing Assistance: Please provide best estimates in the following table based on your continuing activities. Enter number of units of housing served if renewal project is funded and is fully implement and operational—these are the annual housing assistance output goals.

			Accomplishment by Year		
1.	**Facility-based Housing: Enter total units to be provided.**		Year 1	Year 2	Year 3
	Short-term facility				
	Single room occupancy dwelling	☐ Permanent ☐ Non-Permanent			
	Community residence	☐ Permanent ☐ Non-Permanent			
	Other housing facility (specify) _____	☐ Permanent ☐ Non-Permanent			
2.	**Scattered-site Payments**		Year 1	Year 2	Year 3
	Tenant-based rental assistance				
	Short-term rent, mortgage, and utility payments				
	Total Units				

Example: If your four-unit community residence will be funded and operational in each of the next three years, enter 4 in each of the 3 boxes after community residences. Show funding for these units in the budget forms for HOPWA or other funds used to support this housing assistance.

Summary of Persons Assisted. Please provide best estimates in the following table:

		Accomplishment by Year		
		Year 1	Year 2	Year 3
1.	Number of persons with HIV/AIDS who will receive some form of housing assistance			
2.	Number of family members of the above who will be residing with the person receiving housing assistance			
3.	Number of persons reported above in row 1 and 2 who are likely to be chronically homeless (based on your plans for outreach and support for this special needs populations)			
4.	Number of persons with HIV/AIDS and family members who will only be receiving some form of supportive services (persons receiving both services and housing are reported in items 1 and 2 above).			
5.	Number of persons who will be receiving housing information services.			

Example: If some clients transition out of your 4 unit community residence each year and new clients enter the project, enter your estimate of all the persons projected to be served each year.

NOTE on item 3: Chronic homeless is an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more OR has had at least four (4) episodes of homelessness in the past three (3) years. To be considered chronically homeless a person must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these stays. If some persons may meet this definition, but no specialized outreach and service plan is directed at this population, enter zero (0).

E. Outputs and Outcomes Worksheet – informational purposes only in this application.

This worksheet is designed to help grantees and project sponsors consider how to plan to aggregate results for housing stability—do not include in your renewal application.

The HOPWA program is intended to achieve the overall outcome that persons assisted have been enabled to establish and/or better maintain a stable living environment in housing that is safe, decent and sanitary and to reduce the risks of homelessness and improve access to health-care and other supportive services. In addition, output is measured each year on the number of units of housing/households supported with HOPWA funds.

At the end of each year of assistance, HOPWA recipients should consider the effects of their efforts and compare results to the planned outputs and the prior year's outcome baseline on stable housing as part of an assessment of program success. These assessments will help inform the community as well as HUD in assessing past performance and helping to direct future efforts. For example, if an assessment shows that some activities are not helping beneficiaries achieve the desired outcome, recipients should consider what alternatives or enhancements to program efforts might better meet this goal. By its nature, short-term housing support is expected to provide a temporary and unstable housing outcome if persons remain dependent on this type of assistance.

OUTCOME ASSESSED: The HOPWA assisted households were able to establish and/or better maintain stable housing, to reduce their risks of homelessness and improve their access to health-care and other needed support.

OUTCOME INDICATOR is the total as follows (see codes below) as measured in client outcomes at the end of each project operating year:

a. for STRMU assistance: **Stable Housing** is the sum of the number of clients who left the assistance with a reasonable expectation that they will survive on their own after HOPWA assistance (as this is a time-limited form of housing support) as shown as items: 3, 4, 5, and 6 along with any under item 9. **Unstable Situations** is the sum of those ***remaining in STRMU*** program at year-end (who have not yet reached their 21-week limit) plus the numbers reported under items 1, 2, 7 and 8.

b. for Tenant-Based Rental Assistance: **Stable Housing** is the sum of the number of clients who (i) ***remain in the TBRA housing*** and (ii) those who left the assistance as shown as items: 3, 4, 5 and 6 along with any under item 9. **Unstable Situations** is the sum of numbers reported under items 1, 2, 7 and 8.

c. for facility-based forms of housing assistance: **Stable Housing** is the sum of the number of clients who (i) ***remain in the facility housing*** and (ii) those who left the assistance as shown as items: 3, 4, 5, and 6 along with any under item 9. **Unstable Situations** is the sum of numbers reported under items 1, 2, 7 and 8.

Housing Stability Outcomes Assessment Worksheet

Type of Housing Assistance	1 Number in stable housing	2 Number in unstable situations	3 Percent Stable/total
Short-Term Rent, Mortgage, and Utility Assistance			
Tenant-Based Rental Assistance			
Facility-Based Housing Assistance			
Total HOPWA Housing Assistance			

*** Codes Short-term Housing**
1 = Emergency shelter or no housing destination (UNSTABLE)
2 = Temporary housing - moved in with family/friends or other short-term arrangement, such as Ryan White subsidy (UNSTABLE)

Stable Housing/Ongoing Participation 3 = Housing in the private rental or home ownership market (STABLE)
4 = Other HOPWA-funded housing assistance (STABLE)
5 = Other subsidized house or apartment (non-HOPWA, e.g. Section 8) (STABLE)
6 = Institutional setting with greater support (e.g., hospital, in-house dependency treatment, long-term care facility, etc.) (STABLE)

Life Events 7 = Jail /prison (UNSTABLE)
8 = Disconnected/disappeared/ from project support or unknown destination (UNSTABLE)
9 = Death, i.e. remained in housing until death

HOPWA Need for Renewal Chart

Please complete the following chart and submit it with your Need for Renewal Narrative. HUD will review this chart and determine your eligibility for renewal funding based on grant agreement dates and the financial records for reimbursement of expenditures that are filed under HUD's financial system (PAS).

To be eligible, the HOPWA grant must be an expiring grant, defined by the end date in the grant agreement signed with HUD on the existing project (i.e. the term of the grant agreement will have expired in FY2004 or expires within 18 months of the date of publication of this notice). The applicant must demonstrate to HUD that all funds awarded in the grant it seeks to renew will be expended within the period established in the approved grant agreement (including amendments or extensions approved by HUD).

Line 1	Indicated the amount of the prior HOPWA award and grant agreement start and end dates. The grant agreement date of signing or start date, if later, was: and, based on the three year use period, this agreement ends: or was extended for a fourth year until:	$
Line 2	Indicate the amount expended as of 3-30-04.	$
Line 3	Balance Subtotal: subtract Line 2 from Line 1. (See Item 1 below.)	$
Line 4	Indicate the amount to be expended in the balance of FY2004. (By September 30, 2004)	$
Line 5	Indicate the amount to be expended in FY2005. (By September 30, 2005)	$
Line 6	Subtotal: Subtract Lines 4 and 5 from Line 3. (See Item 2 below)	$

1. Please insert grant agreement dates (dd/mm/yy) and attach the extension agreement with HUD if the grant agreement was extended for a fourth year.

2. If the grant agreement dates extended the use period beyond FY2005, and a balance of grant funds is expected to remain, please consider seeking funding in a future year. If balances are expected to remain in FY2005, but the three year use period is going to end in FY 2004, please review the need to make a timely one-year extension request with the area CPD Field Office.

3. HUD may deobligate any amount of HOPWA grant funds that have been renewed under this notice and have not been expended within three (3) years from the date of obligation or program start date, if established as a later date in the new grant agreement.

Permanent Supportive Housing Worksheets
Renewal Applications

Applicants seeking renewal under the HOPWA NOFA must demonstrate that the HOPWA project supported by the prior HOPWA grant and continued through this renewal provides permanent supportive housing to eligible clients. Permanent supportive housing is defined in the HOPWA program NOFA. To meet this definition, you must document that at least 51 percent of the HOPWA program activity funds awarded to the grant you are seeking to renew provided direct permanent supportive housing assistance or provided supportive services to clients living in permanent housing you provided with resources other than HOPWA funds. Complete the following worksheet to determine if your project at least meets this 51 percent threshold.

INSTRUCTIONS

Part 1: Calculation of Funding

1. **HOPWA Project Funding – Funding amount of the original or amended HOPWA grant, which you seek to renew.**

Column A - Original or Amended HOPWA Grant. In Column A, for HOPWA funds only, enter the total program activity costs requested and approved in the prior HOPWA grant. Please note, these costs do not include administrative or project outcome costs. Total Column A.

2. **Permanent Supportive Housing Funding – Percentage of funding dedicated to permanent supportive housing, as defined in the HOPWA NOFA.**

Column B - HOPWA. In Column B, enter the amount of HOPWA funds from the prior HOPWA grant expended or pending use as approved in the grant that directly provide permanent supportive housing. HOPWA funds used for services or housing of clients in emergency, short-term, or transitional situations, may not be included (expect in relation to short-term rent, mortgage, or utility payments). For example, if part of the supportive services provided actually provides services in a short-term, transitional housing situation or to clients not receiving housing assistance, then only the amount of funds directly providing the permanent supportive housing may be used in the calculation.

Please note, HUD has determined that only the following activity categories allow expenditures that meet the definition of permanent supportive housing under your prior grant. You may only account for the percentage of funds that were expended or will be expended on permanent housing activities through:

Acquisition and new construction	Lease and Operating Costs
Rehabilitation, repair, and conversion	Supportive Services (for residents of permanent housing only)
Rental Assistance	
Short-term rent, mortgage, or utility payments	Other HUD approved permanent housing activities

Other HOPWA funded activities, like housing information or resource identification, do not meet the definition of permanent supportive housing. Total Column B.

Column C – Other Funding. If applicable, enter the amount of other funds that provide permanent supportive housing. Other funding resources must be documented in the prior HOPWA grant and documentation that such assistance will continue during the term of the renewal grant must be provided to HUD. Total Column C.

Permanent Supportive Housing Funding Determination

Eligible Activity	HOPWA Project Funding	Permanent Supportive Housing*	
	A. Original or Amended	B. HOPWA	C. Other
1. Acquisition	$	$	$
2. Rehabilitation, Repair, & Conversion	$	$	$
3. New Construction	$	$	$
4. Lease	$	$	$
5. Operating Costs	$	$	$
6. Supportive Services	$	$	$
7. Housing Information	$		
8. Technical Assist. & Resource Identification	$		
9. Rental Assistance	$	$	$
10. Short-term rent, mortgage, & Utility Payments	$	$	$
11. Other (name the type of alternative activity – must be approved in the prior HOPWA grant)	$		
12. Total	$	$	$

* Enter only the amounts of HOPWA or other resources that directly provide permanent supportive housing. You may not consider funds providing other types of housing assistance.

Part 2: Calculation

To determine if your project uses at least 51 percent of funding to provide permanent supportive housing, please make the following calculation:

a. Amount of HOPWA funds providing permanent supportive housing (Total of Column B)	
b. Total amount of project activities (Total of Column A)	
c. Divide Row (a) by Row (b) and multiply by 100.	X100
d. Percentage of project funds providing permanent supportive housing.	%

***Please note:**

1) If the percentage is less than 51 percent, you are not eligible to apply for renewal under "Renewal of Permanent Support Housing Grants".
2) If the percentage is 51 percent or over, you are eligible to apply for renewal under "Renewal of Permanent Support Housing Grants" and must complete the "Certification of Permanent Supportive Housing".

Part 3: Documentation of Match for Supportive Services

If your project requests funds for supportive services, you must match the amount of your request for this activity and the availability of other resources must be documented through a commitment letter. Supportive services must be provided throughout the term of the renewal grant and the amount must at least match any amount requested for HOPWA funding for supportive services.

Chart on Other Resources. The list or chart of leveraging commitments should be attached to your application and must include: (1) the name of the organization or entity that will contribute match funds and if the organization will serve as a project sponsor; (2) describe the work to be accomplished, such as the type of supportive service activities to be undertaken to support the project; (3) the value of cash match contribution related to the HOPWA supportive service funding requested; and (4) a letter from the organization or entity confirming this commitment of resources. Attach more pages as needed.

	A.	B.	C.
1. Name of Organization			
2. Work to be accomplished			
3. Value of cash contributions for Supportive Services Match	$	$	$
4. Commitment letter attached			

	D.	E.	F.
1. Name of Organization			
2. Work to be accomplished			
3. Value of cash contributions for Supportive Services Match	$	$	$
4. Commitment letter attached			

HOPWA Renewal Budget Form

A. Renewal Project Summary Total Budget. In column A, enter the amount of HOPWA funding that was awarded under the prior HOPWA award (including any changes approved by HUD). In column B, enter the total amount of new HOPWA funds being requested. In column C, enter any other funds (i.e. private, local, or state resources) that will be used in conjunction with the requested HOPWA renewal funds to undertake the project. Enter the sum total of requested *HOPWA funds* and *Other funds* (sum of columns B and C) in column D. Enter the totals of each column in line 13 of the budget form.

Eligible Activity	**HOPWA Project Funding**			
	A. Original/Amt.	**B. Renewal Amt.***	**C. Other**	**D. Total**
1. Lease	$	$	$	$
2. Operating Costs	$	$	$	$
3. Supportive Services	$	$ (not greater than $455,000)	$ (match required)	$
4. Housing Information Services	$	$	$	$
5. Technical Assistance & Resource Identification	$	$ (not greater than $65,000)	$	$
6. Rental Assistance	$	$	$	$
7. Short-term Rent, Mortgage, and Utility Payments	$	$	$	$
8. Other (please indicate the activity) ———	$	$	$	$
9. Subtotal of Activity Costs	$	$ (not greater than $1,300,000)	$	$
10. Grantee's Administrative Costs (not to exceed 3% of Subtotal)	$	$	$	$
11. Project Sponsor's Administrative Costs (not to exceed 7% of amounts received by sponsors)	$	$	$	$
12. Collect data on Project Outcomes	$	$ (not greater than $25,000)	$	$
13. Total HOPWA Request	$ (see line 14 total)	$	$	$
14. Amounts for capital development activities in the original or amended HOPWA grant	$	N/A	$	$

*Notes: Column B above should reflect the total of funding requested for all years as outlined below in Table B and should not be greater than 120% of amounts shown in Column A, except in special circumstances allowed under the NOFA. In item 14 provide the total of HOPWA funds awarded for acquisition, new construction, rehabilitation under the existing grant and amounts of this nature being leveraged from other sources for the renewal project, if any. Indicate your match and other commitments of funding to continue your permanent supportive housing effort.

B. Annual Budget Summary. In columns A through C enter the requested amount of HOPWA funds by year. The term of the grant is expected to be 3 years. You may request up to 20 percent more than the original award for renewal by activity, but the total requested funds must not exceed $1,300,000. For additional details on eligible activities and limitations, consult the program NOFA and regulations at 24 CFR 574.300-340. One-time capital development costs are not eligible for renewal. In column D, enter the total amount of requested HOPWA funds for each year by summing columns A through C. The totals in Column D should equal the totals in Column B in Section A-"Renewal Project Summary Budget" and should represent your total request for HOPWA funds. Enter the totals of each column in line 13 of the budget form.

Eligible Activity	HOPWA Project Funding Only			
	A. Year 1	B. Year 2	C. Year 3	D. Total *
1. Lease	$	$	$	$
2. Operating Costs	$	$	$	$
3. Supportive Services	$	$	$	$ (not greater than $455,000)
4. Housing Information	$	$	$	$
5. Technical Assistance & Resource Identification	$	$	$	$ (not greater than $65,000)
6. Rental Assistance	$	$	$	$
7. Short-term Rent, Mortgage, and Utility Payments to Prevent Homelessness	$	$	$	$
8. Other (please indicate the activity)	$	$	$	$
9. Subtotal of Activity Costs	$	$	$	$ (not greater than $1,300,000)
10. Grantee's Administrative Costs (not to exceed 3% of Subtotal)	$	$	$	$
11. Project Sponsor's Administrative Costs (not to exceed 7% of amounts received by sponsors)	$	$	$	$
12. Collect data on Project Outcomes	$	$	$	$ (not greater than $25,000)
13. Total	$	$	$	$

*Note: Totals in this column should equal the totals in Column B, Section A – "Renewal Project Summary Budget".

C. Renewal Project Descriptive Budget Instructions:

1. For the grantee and each project sponsor receiving HOPWA renewal funds under this application, please complete the Renewal Project Descriptive Budget Form. The first form should be completed for the grantee, followed by one form for each project sponsor. In the form number boxes enter the number of the form followed by the total numbers of forms submitted. For example, if you are the grantee and have two project sponsors, you will complete three forms. The first form should be for the grantee and will be numbered as (1 of 3). You will then

complete two additional forms for each project sponsor. The first project sponsor form will be numbered as (2 of 3), and the second (3 of 3).

1. Enter the name of the organization (grantee or project sponsor).

2. As applicable, mark if you are completing this form for the grantee or project sponsor.

3. For each HOPWA Eligible Activity that you are requesting HOPWA funding, give a brief description of the activity. This description should be a 1-2 line summary of the activity.

EXAMPLE 1:

HOPWA Eligible Activity and Description	**HOPWA Request**
Rental Assistance	$525,000
Description: *Provide long-term, tenant-based rental assistance through the "Rent Project" to 25 individuals and 10 families per year over a three-year grant period (average $5,000 per household per year).*	

EXAMPLE 2:

Eligible Activity and Description	**HOPWA Request**
Supportive Services	$120,000
Description: *One employee (0.5FTE) will provide case management, nutritional services, and mental health counseling to 45 individuals in the "AIDS Housing" facility each year for the three years of the grant term.*	

5. For each HOPWA Eligible Activity (lines 1-10), enter the amount of requested HOPWA renewal funds. NOTE: A sum of each HOPWA request completed on the Project Descriptive Budget for the grantee and each project sponsor should equal the totals entered in Section A-Column B of the Renewal Project Summary Budget.

D. HOPWA Renewal Project Budget Form *Form* ☐ *of* ☐

Name of Grantee/Project Sponsor:

Mark one of the following:
Grantee ☐ **Project Sponsor** ☐

Eligible Activity and Description	E. HOPWA Renewal Request
1. Lease	$
Description:	
2. Operating Costs	$
Description:	
3. Supportive Services	$
Description:	
4. Housing Information	$
Description:	
5. Technical Assistance and Resource Identification	$
Description:	
6. Rental Assistance	$
Description:	
7. Short-term Rent, Mortgage & Utility Payment to Prevent Homelessness	$
Description:	
8. Other (please indicate the activity)	$
Description:	
9. Administrative Costs (Grantee or Project Sponsor)	$
Description:	
10. Collect data on Project Outcomes (not to exceed $25,000)	$
Description:	

Please submit one of these pages for each organization that receives HOPWA funds (the grantee and any project sponsors)

HOPWA Applicant Certifications

These certified statements are required by law.

The Applicant hereby assures and certifies that:

1. **Fair Housing**. Within the HOPWA eligible population, it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR Part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance, and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

It will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and with implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing. For Indian tribes, it will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), instead of Title VI and the Fair Housing Act and their implementing regulations.

It will comply with Executive Order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR Part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

It will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1), which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)), and regulations pursuant thereto (24 CFR Part 135), which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project and contracts for work in connection with the project be awarded in substantial part to per-sons residing in the area of the project.

It will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR Part 8, which prohibit discrimination based on handicap in Federally-assisted programs and activities.

It will comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, and where applicable, the design and construction requirements of the Fair Housing Act.

It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

It will comply with Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and

operated by members of minority groups and women.

If persons of any particular race, color religion, sex, age, national origin, familial status, or handicap who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested per-sons can obtain information concerning the assistance.

2. Environmental Requirements. The grantee, its project sponsors and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project, or commit or expend HUD or local funds for such eligible activities, until the responsible entity (as defined in §58.2) has completed the environmental review procedures required by 24 CFR part 58 and the environmental certification and HUD approval of form HUD-7015.15, "Request for Release of Funds and Certification" (RROF) of compliance with the National Environmental Policy Act and implementing regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities). HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

3. HOPWA Facility Use Period. Any building or structure assisted with amounts under this part will be maintained as a facility to provide assistance for eligible persons: (i) for not less than 10 years in the case of assistance involving new construction, substantial rehabilitation or acquisition of a building or structure; and (ii) for not less than three years in cases involving non-substantial rehabilitation or repair of a building or structure.

HOPWA Applicant Certifications

Signature of Authorized Certifying Official & Date

X

Title

Name of Applicant

Please include this page in your application. Page | | form **HUD-40110-B** (04/30/2007)

[FR Doc. 04–12087 Filed 5–27–04; 8:45 am]
BILLING CODE 4210–32–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 28, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 20, 2004.

Mark. R. Johnston,

Acting Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–11848 Filed 5–27–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–46]

Order of Succession

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the General Counsel for the Department of Housing and Urban Development designates the Order of Succession for the Office of General Counsel for the Department. This Order of Succession supersedes the Order of Succession for the General Counsel, published on August 22, 2000.

EFFECTIVE DATE: May 21, 2004.

FOR FURTHER INFORMATION CONTACT: John Opitz, Assistant General Counsel for Procurement and Administrative Law, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, (202) 708–0622. This is not a toll-free number. For those needing assistance, this number may be accessed via TTY by calling the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the General Counsel when, by reason of absence, disability or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice published on August 22, 2000 at 65 FR 51016.

Accordingly, the General Counsel designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the General Counsel for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the General Counsel, the following officials within the Office of General Counsel are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy General Counsel for Equal Opportunity and Administrative Law;

(2) General Deputy General Counsel;

(3) Deputy General Counsel for Litigation and Enforcement;

(4) Associate General Counsel for Assisted Housing and Community Development;

(5) Associate General Counsel for Finance and Regulatory Compliance;

(6) Associate General Counsel for Insured Housing;

(7) Associate General Counsel for Litigation;

(8) Associate General Counsel for Program Enforcement;

(9) Associate General Counsel for Human Resources;

(10) Associate General Counsel for Fair Housing;

(11) Associate General Counsel for Legislation and Regulations.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the General Counsel, published at 65 FR 51016 (August 22, 2000).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 21, 2004.

Richard A. Hauser,

General Counsel.

[FR Doc. 04–12086 Filed 5–27–04; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 28, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit

to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–072219

Applicant: Jacksonville Zoological Society, Jacksonville, FL.

The applicant requests a permit to import five giant otter (*Pteronura brasiliensis*) from the government of Guyana, for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

PRT–085095

Applicant: International Iguana Foundation, Fort Worth, TX.

The applicant requests a permit to import ten captive-born Grand Cayman ground iguanas (*Cyclura nubila lewisi*) from the National Trust for the Cayman Islands, Grand Cayman, Cayman Islands, for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

PRT–828861

Applicant: Wesley W. Kyle III, Pipe Creek, TX.

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of the survival of the species. This notice covers activities conducted under this permit for a period of five years.

PRT–086968

Applicant: James J. Liautaud, Champaign, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–087036

Applicant: Gerald M. Matsunaga, Kahului, HI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–087051

Applicant: Gregory G. Liautaud, Trout Valley, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–086964

Applicant: David W. Schubert, Shawnee, OK.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

PRT–086969

Applicant: Kelly R. McBride, Chandler, AZ.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–086970

Applicant: Nicholas T. Wienold, Palatine, IL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–087037

Applicant: Thomas J. Hoffman, Sr., Albany, NY.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster sound polar bear population in Canada for personal use.

PRT–087099

Applicant: Terry N. Steinheiser, Butler, PA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster sound polar bear population in Canada for personal use.

Dated: May 14, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–12119 Filed 5–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 28, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications

should be submitted to the Director (address above).

Applicant: Martin Koop, Escondido, CA, PRT–083770.

The applicant requests a permit to export one personally-owned captive-bred pet golden conure (*Guarouba guarouba*), hatched 4/12/2001, and return with it within five years.

Applicant: University of New Mexico, Museum of Natural History, Albuquerque, New Mexico, PRT–084874.

The applicant requests a permit to export and re-import museum specimens of endangered and threatened species of plants and animals previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Jacksonville Zoological Society, Jacksonville, FL, PRT–072761.

The applicant requests a permit to import five jaguar (*Panthera onca*) and biological samples from these same specimens for diagnostic health screening, from the government of Guyana for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Duke University Primate Center, Durham, NC, PRT–081211.

The applicant requests a permit to import seven (3 male and 4 female) captive born lemurs (*Microcebus murinus*) from the Paris Zoo, France, for the purpose of enhancement of the species through scientific research and enhancement of the survival of the species in the wild.

Applicant: Wilfred P. Schmoe, Jackson, WY, PRT–085899.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John Penek, Warren, NJ, PRT–085896.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Clyde Bros./Johnson Circus Corp, Seagoville, TX, PRT–085446, 085448, 085449, 085450, 085451, 085452, 085453, and 085454.

The applicant requests permits to re-export and re-import tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 085446—Barnum; 085448—Tangiers, 085449—Conan, 085450—Voltan, 085451—Bengali, 085452—Kismit, 085453—India, and 085454—Robin. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Phillip A. Teel, Dix Hills, NY, PRT–086649.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Robert D. Yajko, Glenwood Springs, CO, PRT–086723.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Dated: May 7, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–12121 Filed 5–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance of Permit for Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency issuance of permit for endangered species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On May 10, 2004, the U.S. Fish and Wildlife Service (Service) re-issued a permit (PRT–011646) to the Kootenai Tribe of Idaho, Bonners Ferry, ID, to export white sturgeon (*Acipenser transmontanus*) fertilized eggs from a spawning and rearing facility in Bonners Ferry, Idaho to the Kootenary Trout Hatchery in Fort Steele, British Columbia, as advised in the USFWS White Sturgeon Recovery Team Plan for the purpose of enhancement of the survival of the species through conservation and propagation. This notification covers activities conducted by the applicant over a five year period. This action was authorized under Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). The Service determined that an emergency affecting the health of the Kootenai River white sturgeon population existed, and that no reasonable alternative was available to the applicant for the following reasons.

The Kootenai Tribe of Idaho requested re-issuance of a permit (PRT–011646) to export multiple shipments of white sturgeon (*Acipenser transmontanus*) fertilized eggs from a spawning and rearing facility in Bonners Ferry, Idaho to the Kootenary Trout Hatchery in Fort Steele, British Columbia, an action addressed in the white sturgeon recovery plan. This action is taken to protect against the loss of the entire hatchery and/or wild stock due to natural or man-made catastrophic events. This permit was issued as an

emergency action in order to accommodate the white sturgeon's spawning season.

Dated: May 10, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–12122 Filed 5–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
083389	Charles S. Harrison	69 FR 13324; March 22, 2004	May 6, 2004.
083529	Charles H. Johnson	69 FR 13324; March 22, 2004	May 7, 2004.

Dated: May 14, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–12120 Filed 5–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1310–DB]

Notice of Availability of Final Environmental Impact Statement for the Desolation Flats Natural Gas Field Development Project

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability (NOA) of a Final Environmental Impact Statement (FEIS) for the Desolation Flats Natural Gas Field Development Project, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Desolation Flats Natural Gas Field Development Project FEIS that analyzes the environmental consequences of the Desolation Flats proposed natural gas development and production operation. The 233,542 acre Desolation Flats project area is located within the administrative jurisdictions of the BLM Rawlins and Rock Springs Field Offices, approximately 21 miles south of Wamsutter and 14 miles west of Baggs, Wyoming in Townships 13–16 North, Ranges 93–96 West, Sixth Principal Meridian, Sweetwater and Carbon Counties.

DATES: The FEIS will be available for review for 30 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. The BLM can best utilize your comments and resource information submissions within the 30 day review period provided above.

ADDRESSES: A copy of the FEIS has been sent to affected Federal, State, and local government agencies and to interested parties. Copies of the FEIS will be available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301.
- Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Mr. David Simons, Project Manager, BLM Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301. Mr. Simons may also be reached at (307) 367–5309. Ms. Teri Deakins, Environmental Protection Specialist, BLM Rock Spring Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901 may also be contacted and reached at (307) 352–0211.

SUPPLEMENTARY INFORMATION: EOG Resources, Inc., Tom Brown, Inc., Basin Exploration, Inc., Yates Petroleum Corporation, Questar Exploration and Production Company, Merit Energy Company, Santa Fe Snyder Corporation and other companies (referred to the Operators) propose to drill up to 592 wells. Over the next 20 years the Operators propose to explore and develop the oil and gas resources held through their existing leases within the Desolation Flats Project Area. Well density would range from two wells per 640 acres to four wells per 640 acres, depending on geologic conditions.

Expansion of natural gas exploration and development is proposed in and adjacent to other oil and gas developments including the Willow Reservoir, Wedge, Mulligan Draw, Powder Mountain, Desolation Flats, Ruger, Dripping Rock, Cedar Chest, Triton, and Lookout Wash Units and the surrounding areas, collectively referred to as the Desolation Flats Area. Of the approximately 233,500 acres area surface ownership of the project area is 96 percent Federal lands administered by the BLM, 3 percent private, and less than 1 percent State of Wyoming. Currently, there are approximately 127 producing oil and gas wells drilled within the Desolation Flats project area, and up to 592 additional wells could be drilled over the next 20 years.

The BLM published its Notice of Intent to prepare an Environmental Impact Statement for the Desolation Flats Natural Gas Development Project in the **Federal Register**, on May 18, 2000. The Notice of Availability of a Desolation Flats Draft EIS was published by the EPA in the **Federal Register** May 2, 2003. Based upon issues and concerns identified during scoping and throughout the NEPA process, the Desolation Flats FEIS analyses focus on the impacts to air quality, biological and

physical resources, transportation, socio-economics, and cumulative effects. The FEIS, in compliance with section 7(c) of the Endangered Species Act, as amended, includes the Biological Assessment for the purpose of identifying endangered or threatened species which may be affected by the Proposed Action.

The Desolation Flats FEIS analyzed 3 alternatives in detail:

1. The Proposed Action Alternative, as described below;

2. Alternative A, an alternative that proposes to expand oil and gas development into less productive areas within the project area;

3. Alternative B, the No Action Alternative, which means to project as proposed would not be authorized.

Agency Preferred Alternative: BLM's preferred alternative is the Proposed Action Alternative.

The Desolation Flats FEIS analyzes the impacts of the Proposed Action, economic field development of 385 natural gas wells, along with access roads, pipelines, and other ancillary facilities (gas processing plant, compressor stations, water disposal sites, etc.).

Alternative A, which is similar to the Proposed Action, would expand well development into the economically marginal areas of the leases that may become economically viable in the future, increasing the number of wells to approximately 592 wells within the project area.

Alternative B is the no-action alternative. Applications for Permit to Drill (APDs) and Right-of-Way actions would be granted by the BLM on a case-by-case basis through individual project and site-specific environmental analysis.

How To Submit Comments

The BLM welcomes your comments on the Desolation Flats FEIS. Comments may be submitted as follows:

Written comments may be mailed directly or delivered to the BLM at: Desolation Flats FEIS, Project Manager, Bureau of Land Management Rawlins Field Office, 1300 N. Third Street, P.O. Box 2407, Rawlins, WY 82301.

BLM will only accept comments on the Desolation Flats FEIS if they are submitted in one of the methods as described above. To be given consideration by BLM all DEIS comment submittals must include the commenter's name and street address.

Our practice is to make comments, including the names and street addresses of each respondent, available for public review at the BLM office listed above during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address or both from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: March 18, 2004.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–11498 Filed 5–27–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–04–1610–DR]

Notice of Change to Proposed Resource Managment Plan Amendment; Notice of Public Comment Period

AGENCY: Bureau of Land Management (BLM), Interior.

ACTIONS: Notice of Change to the Proposed Resource Management Plan Amendment (RMPA) for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties, New Mexico, and opening of a 30-day public comment period.

Notice of availability of a Supplement to the Final Environmental Impact Statement (EIS) for the Proposed RMPA for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties, New Mexico, and opening of a 30-day public comment period.

SUMMARY: In response to recommendations offered by the Governor of New Mexico, made pursuant to 40 CFR 1610.3–2, and concerns raised in protests to the Proposed RMPA, the BLM announces a change to the Proposed RMPA for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties, New Mexico. The BLM is now proposing to discretionarily close to fluid mineral leasing approximately 35,790 acres located in the Nutt and Otero Mesa desert grasslands habitat areas. The Proposed RMPA described these areas as being withheld from leasing for 5 years and then subject to reevaluation. A 30-day period is being provided to allow the public an opportunity to comment on this proposed closure. See 43 CFR 1610.5–1(b). A supplement to the Final EIS for the Proposed RMPA for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties is now available. See 40 CFR 1502.9(c)(2). The Final EIS Supplement analyzes the impacts of the proposed closure described above. It also provides additional analysis regarding the proposed action alternative (Alternative A Modified) identified in the Proposed RMPA. Alternative A Modified reflected changes made in response to public comments offered on the Draft RMPA and EIS. See 40 CFR 1503.4(a). A 30-day period is being provided to allow the public an opportunity to comment on both the analysis contained in the Final EIS Supplement and the analysis of Alternative A Modified as presented in the Proposed RMPA and Final EIS. See 40 CFR 1503.1(b).

The comment periods will run concurrently. At this time, no final decision has been made regarding either the proposed closure or any other aspect of Alternative A Modified. All comments submitted during this period will be considered by the BLM as part of its decision-making process in this matter.

ADDRESSES: A single document describing the proposed closure and containing the Final EIS Supplement is available upon request from the Las Cruces BLM Field Office and the BLM State Office in Santa Fe, New Mexico. In addition, the document is available on the BLM Web site at *www.nm.blm.gov.* Comments must be sent to: State Director Linda Rundell, Supplement Comments, Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502–0115. If sent by an overnight delivery service or hand carried, the address is as follows: State Director Linda Rundell, Supplement Comments, Bureau of Land Management, 1474 Rodeo Road, Santa Fe, NM 87505. The comment periods will begin on the date the Environmental Protection Agency notice of availability of the Final EIS Supplement appears in the **Federal Register** and will end 30 days after that date. The ending date for the comment period will be on the BLM Web site listed above and in news releases provided to the local media.

FOR FURTHER INFORMATION CONTACT: Tom Phillips, Las Cruces Field Office, 1800 Marquess Street, Las Cruces, NM 88005–3371. The phone number is (505) 525–4377.

SUPPLEMENTARY INFORMATION: Both the Draft RMPA/EIS and Proposed RMPA/Final EIS were developed with broad public participation during a 6-year collaborative planning process. These documents can be found at the BLM's Web site: *www.nm.blm.gov.*

Dated: April 30, 2004.

Linda S.C. Rundell,

State Director.

[FR Doc. 04–11500 Filed 5–27–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930, 1430–EU; N–76161A]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The below listed public lands in Orovada, Humboldt County, Nevada, have been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248).

FOR FURTHER INFORMATION CONTACT: M. Lynn Trost, Realty Specialist, at the above address or telephone in Winnemucca at (775) 623–1500.

SUPPLEMENTARY INFORMATION: The following described parcels of land, situated in Humboldt County, Nevada, are being offered for sale as a competitive sale:

Mount Diablo Meridian, Nevada

Parcel A: T. 44 N., R. 37 E., Section 29: N½NE¼, E½NW¼
Containing 160 acres more or less.

Parcel B: T. 43 N., R. 37 E., Section 5: Lots 1, 2, and 3, S½NE¼, N½SE¼, SE¼SE¼
Containing 319.95 acres more or less.

Parcel C: T. 43 N., R. 37 E., Section 4, Lots 3 and 4, S½NW¼
Containing 160.48 acres more or less.

Parcel D: T. 43 N., R. 37 E., Section 4, S½SW¼, SE¼
Containing 240 acres more or less.

Totaling 880.43 acres.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. The subject lands shall be sold for not less than fair market value (FMV) as determined by appraisal. The locatable, salable, and leasable mineral rights will be conveyed simultaneously with the surface estate. The Fort McDermitt Tribe did not respond to Consultation. The disposal would not generate any adverse energy impacts or limit energy production and distribution (EO 13212).

The above described land is hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended. On May 28, 2004, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. On May 28, 2004 and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale. This segregation will terminate upon issuance of a patent for said parcel or 270 days from the date of this publication, whichever occurs first. At least 60 days prior to the sale, this notice and sale date shall be advertised for three consecutive weeks in the Humboldt Sun Newspaper, published in Winnemucca Nevada.

This sale will be by competitive procedures. Bids shall be not less than the FMV. The appraised fair market value is $175.00 per acre (one hundred and seventy-five dollars and no cents). Each parcel will be offered by sealed bid, followed by an oral auction. The parcels shall be sold individually. The highest qualifying bid for each subject parcel, whether sealed or oral, will be declared the high bid. Bidders can participate at one or both bid process under the following requirements:

Sealed Bid

Sealed bid envelopes must be marked on the lower front left corner with the parcel's identifying letter (A, B, C, or D), and N–76161A. A separate bid for each parcel must be submitted in an individual sealed envelope. Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Department of the Interior (DOI), Bureau of Land Management (BLM), for not less than 20 percent of the bid amount. Failure to prescribe to the above, shall determine the bid disqualified. In the event a sealed bid for a subject parcel is not designated as the apparent high bid for the same subject parcel, the deposit shall be returned to the bidder.

Oral Auction

Approximately, two hours after the opening of the sealed bids, the oral auction shall be held. The highest qualified sealed bid for each subject parcel will become the starting bid for the same subject parcel in the oral bidding. If no sealed bids are received for a subject parcel, oral bidding on the same subject parcel shall begin at the appraised market value. The apparent high oral bidder for a subject parcel, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the DOI, BLM for not less than 20 percent of the bid amount.

In the event there are no oral bids for a parcel, and should two or more sealed bid envelopes contain valid bids of the same amount for the same parcel, the determination of which is to be considered the highest bid shall be by supplemental sealed bid.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

At least 60 days prior to the sale, detailed information concerning the sale, including the sale procedures, and sale date shall be available at the BLM Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca NV 89445; on the BLM Winnemucca Field Office Web site at: *http://www.nv.blm.gov/winnemucca/,* then click on ''News'', or by calling M. Lynn Trost, Realty Specialist at (775) 623–1500. Maps delineating the individual sale parcels shall be available for review at the BLM Winnemucca Field Office.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses

of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands.

It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The purchaser/patentee, by accepting a patent, agrees to indemnify, defend, hold harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising out of or in connection with the use/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solids or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal laws are generated, released or stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The patent(s), when issued, will contain the following reservation to the United States:

A Right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

And will be subject to:

Parcel A: Those rights for power transmission line purposes which have been granted to Harney Electric Cooperative, Inc., by Right-of-way NEV–058651, under the Act of October 21, 1976 (43 U.S.C. 1761), being 20 feet wide by approximately 1,320 feet long, located in T. 44 N., R. 37 E., Section 29: N½NE¼NW¼.

Those rights for ingress and egress purposes which have been granted to Humboldt County, Nevada, by Right-of-way N–77234, North Valley Road #309, under the act of October 21, 1976 (43 U.S.C. 1761), being 30 feet wide by approximately 1,320 feet long, located in T. 44 N., R. 37 E., Section 29: E½NE¼NE¼, running north-south adjacent to the section line common to Sections 29 and 28.

Those rights for ingress and egress purposes which have been granted to Home Ranch, LLC, by Right-of-way N–77025, under the act of October 21, 1976 (43 U.S.C. 1761), being 32 feet wide by approximately 3,960 feet long, located in T. 44 N., R. 37 E., Section 29: N½N½NE¼, N½NE¼NW¼, running east-west adjacent to the section line common to Sections 29 and 20.

Those rights for a water distribution pond, and associated infrastructures granted to Hans Van der Hoek, by Right-of-way N–77179, under the act of October 21, 1976 (43 U.S.C. 1761), for a pond, pipe line(s) and maintenance area encompassing 280 feet long east-west by 110 feet wide north-south, located in T 44 N, R 37 E, Section 29: SW¼NW¼NE¼; and a road located south and adjacent to the pond being 2,640 feet long east-west and 12 feet wide north-south, located in Section 29: N½NE¼.

Parcel B: Those rights for power transmission line purposes which have been granted to Harney Electric Cooperative, Inc., by Right-of-way NEV–058382, under the Act of October 21, 1976 (43 U.S.C. 1761), being 40 feet wide by approximately 1,320 feet long, located in T. 43 N. R. 37 E., Section 5: S½SE¼SE¼, running east-west adjacent to the section lines common to Sections 5 and 8.

Those rights for ingress and egress purposes which have been granted to Humboldt County, Nevada, by Right-of-way #N–77238, Home Ranch Road #313, under the act of October 21, 1976, (43 U.S.C. 1761), being 60 feet wide by approximately 3,700 feet long, located in T. 43 N., R. 37 E., Section 5: NE¼SE¼, S½NW¼SE¼, SE¼SE¼.

Those rights for ingress and egress purposes which have been granted to Humboldt County, Nevada, by Right-of-way #N–77234, North Valley Road #309, under the act of October 21, 1976, (43 U.S.C. 1761), being 30 feet wide by approximately 5,280 feet long, located in T. 43 N., R. 37 E., Section 5: Lot 1, E½SE¼NE¼, E½SE¼.

Parcel C: Those rights for power transmission line purposes which have been granted to Harney Electric Cooperative, Inc., by Right-of-way NEV–058382, under the Act of October 21, 1976 (43 U.S.C. 1761), being 40 feet wide by approximately 2,640 feet long, located in T. 43 N. R. 37 E., Section 4: Lot 4, W½SW¼NW⅛, running north-south adjacent to the section line common to Sections 4 and 5.

Those rights for a buried cable which have been granted to Oregon Idaho Utilities, Inc., dba Humboldt Telephone Company by Right-of-way N–60463, under the Act of October 21, 1976 (43 U.S.C. 1761), being 15 feet wide by approximately 2,640 feet long, located in T 43 N., R. 37 E., Section 4: W½NW¼, running north-south adjacent to the section line common to Sections 4 and 5.

Those rights for ingress and egress purposes which have been granted to Humboldt County, Nevada, by Right-of-way #N–77234, North Valley Road #309, under the act of October 21, 1976, (43 U.S.C. 1761), being 30 feet wide by approximately 2,640 feet long, in T. 43 N., R. 37 E., Section 4: Lot 4, W½SW¼NW¼, running north-south adjacent to the section line common to Sections 4 and 5.

Parcel D: Those rights for power transmission line purposes which have been granted to Harney Electric Cooperative, Inc., by Right-of-way NEV–058382, under the Act of October 21, 1976 (43 U.S.C. 1761), being 40 feet wide by approximately 1,320 feet long, in T. 43 N., R. 37 E., Section 4: W½SW¼SW¼, running north-south adjacent to the section line common to Sections 4 and 5.

Those rights for power transmission line purposes granted to Harney Electric Cooperative, Inc., by Right-of-way NEV–058382, under the Act of October 21, 1976 (43 U.S.C. 1761), being 40 feet wide by approximately 5,280 feet long, located in T. 43 N., R. 37 E., Section 4: S½S½, running north-south adjacent to the section line common to Sections 4 and 5.

Those rights for a buried cable granted to Oregon Idaho Utilities, Inc., dba Humboldt Telephone Company by Right-of-way N–60463, under the Act of October 21, 1976 (43 U.S.C. 1761), being 15 feet wide by approximately 1,320 feet long, located in T. 43 N., R. 37 E., Section 4: W½SW¼SW¼, running north-south the length of the parcel adjacent to the section line common to Sections 4 and 5.

Those rights for ingress and egress purposes which have been granted to

Humboldt County, Nevada, by Right-of-way #N–77234 North Valley Road #309, under the Act of October 21, 1976 (43 U.S.C. 1761), being 30 feet wide by approximately 1,320 feet long, located in T. 43 N., R. 37 E., Section 4: W½SW¼SW¼, running north-south adjacent to the section line common to Sections 4 and 5.

Those rights for ingress and egress purposes which have been granted to Humboldt County, Nevada, Right-of-way #N–77238, Home ranch Road #313, under the Act of October 21, 1976 (43 U.S.C. 1761), being 60 feet wide by approximately 750 feet long, located in T. 44 N., R. 37 E., Section 4: SW¼SW¼.

The purchaser(s), by accepting the land patent on parcels B, C, and D, agree to take the property subject to the current grazing lease, authorized under the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934. The two-year notification commenced on June 11, 2003. The two-year period of notification shall end on June 12, 2005. It has been determined that the subject parcels contain no mineral value. The parcels shall be sold with no reservation of mineral rights to the United States. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The purchaser(s) will be required to pay a $50.00 non-refundable filing fee for conveyance of said mineral interests on each parcel when remitting final payment for the parcel(s).

The purchase price does not include the costs for publishing this NORA in the **Federal Register**. The purchaser(s) will be required to reimburse the BLM for all publishing costs of the NORA and for the newspaper notification.

Lands will not be offered for sale until at least July 27, 2004.

Protests: Until July 12, 2004, interested parties may submit comments regarding whether the BLM followed proper administrative procedures in reaching the decision or any other factor directly related to the suitability of the land for a competitive sale. Comments should be sent to Gene Seidlitz, Assistant Field Manager, Nonrenewable Resources, BLM Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from the sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commenter's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commenter's request to have their name and/or address withheld from public release will be honored to the extent permissible by law following proper administrative procedures in reaching the decision or any other factor directly related to the suitability of the land for a competitive sale. *BLM will not consider anonymous comments.* The Environmental Assessment (EA) and Decision Record (DR) (NV–020–03–17) are available for review at the Winnemucca Field Office, and on the Winnemucca Field Office Internet address at: *http://www.nv.blm.gov/winnemucca.*

This Notice in the **Federal Register** allows the parcel to be re-offered for sale until the parcel has been sold at the discretion of the Authorized Officer. In the event a parcel is not sold, the parcel shall be automatically opened for entry without further notice, 270 (two hundred and seventy) days from the date of this publication.

Issued April 7, 2004.

Vicki L. Wood,

Winnemucca Associate Field Manager.

[FR Doc. 04–11725 Filed 5–27–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cyber Security Industry Alliance, Inc.

Notice is hereby given that, on April 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cyber Security Industry Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Check Point Software Technologies, Inc., Redwood City, CA; Entrust Inc., Addison, TX; Internet Security Systems, Inc., Atlanta, GA; NetScreen, Sunnyvale, CA; Network Associates, Inc., Santa Clara, CA; RSA Security, Inc., Bedford, MA; Secure Computing Corporation, San Jose, CA; Symantec Corporation, Cupertino, CA; PGP Corporation, Palo Alto, CA; Computer Associates International, Inc., Islandia, NY; BindView Development Corporation, Houston, TX; Citadel Security Software, Inc., Dallas, TX; and Qualys, Inc., Redwood Shores, CA. The nature and objectives of the venture are to promote the continuous enhancement of cyber security through public policy, education and technology-focused initiatives; to promote such initiatives across the cyber security industry and on a global basis; to promote and encourage the adoption of strong, effective technology standards relating to the cyber security industry through the foregoing initiatives and public education and to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–12061 Filed 5–27–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center For Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Albright Strategy Group, LLC, Morristown, NJ; Center for Automotive Research, Ann Arbor, MI; CTA, Inc., Huntsville, AL; Durr Environmental, Inc., Plymouth, MI; Fraunhofer USA, Plymouth, MI; Goodrich Aerostructures Group, Chula Vista, CA; H & R Technology Inc., Portland, OR.; Integrated Technologies, Inc., Danville,

VT; PCC Structurals, Inc., Portland, OR; Support Systems Associates, Inc., Melbourne, FL; Teradyne, Inc., Assembly Test Division, N. Reading, MA; Toolmen Corporation, Round Rock, TX; and Vision Solutions International, Inc., Farmington Hills, MI have been added as parties to this venture. Also, EER Systems (L–3 Communications), Chantilly, VA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center For Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, National Center For Manufacturing Sciences, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on February 2, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 2004 (69 FR 10263).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–12060 Filed 5–27–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Small Arms Technology Consortium

Notice is hereby given that, on April 1, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Small Arms Technology Consortium (''NSATC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are AAI Corporation, Hunt Valley, MD; Accent on Creativity, Newton, NJ; Alliant Techsystems, Inc., Plymouth, MN; ALTARUM, Ann Arbor, MI; AMBRICK, USA, Poland, OH; American Ordnance LLC, Pittsburg, KS; American Systems Corporation, Dumfries, VA; Applied Ordnance Technology, Inc., Dover, NJ; ARMALITE, Geneseo, IL,; ATI, North Charleston, SC; Barrett Firearms, Murfreesboro, TN; Batelle Memorial Institute, Columbus, OH; Batelle Memorial Institute, Lake Hiawatha, NJ; Batelle Memorial Institute, Aberdeen, MD; Beretta USA, Accokeek, MD; BES Systems, Inc., New York, NY; Blackwater Target Systems, Noyock, NC; Brashear LP, Pittsburg, PA; Computer Aided Engineering Associates, Inc., Flanders, NJ; CAPO Inc., Grand Junction, CO; Cape Aerospace, Cape Coral, FL; Colt Defense LLC, West Hartford, Connecticut; ELCAN Optical Technologies, Midland, Ontario, CANADA; Engineering and Management Executives, Inc., Alexandria, VA; FN Herstal S.A., Herstal, BELGIUM; FN Herstal USA, Inc., McLean, VT; FN Manufacturing, Columbia, SC; General Dynamics Armament and Technical Products, Burlington, VT; GLOCK, Inc., Solvay, NY; Hekler and Koch, Inc., Sterling, VA; Idaho National Engineering and Environmental Laboratory, Idaho Falls, ID; KamanDayron, Orlando, FL; Los Alamos National Laboratory, Los Alamos, NM; Mechanical Solutions, Inc., Parsippany, NJ; MER Corporation, Tucson, AZ; Meprolight, Inc., Washignton, DC; Metal Storm LTD, Arlington, VA; New Jersey Institute of Technology, Newark, NJ; O.F. Mossberg, North Haven, CT; Pacific Scientific, Inc., San Carlos, CA; Polymer Technologies, Inc., Clifton, NJ; Remington Arms Company, Inc., Lonoke, AR; Saint Marks Powder, General Dynamics Tactical Systems, Dover, NJ; Sandia National Laboratories, Albuquerque, NM; SIGARMS, Rockville, MD; Smith and Wesson, Springfield, MA; S.H. Smith Associates, Hoboken, NJ; Stevens Institute of Technology, Hoboken, NJ; Tanner Research, Pasadena, CA; Universal Chemical, Stuart, FL; University of Florida, Shalimar, FL; University of Missouri at Rolla, Rolla, Missouri; Western Design, Irvine, CA; and Wise Web Connection, Dover, NJ.

The nature and objectives of the venture are (1) to conduct research and development activities in the area of small arms weapons systems technology; (2) to enter into a Section 845 ''Other Transactions'' Agreement (the ''OT Agreement'') with the US Army (the ''Government'') for the funding of certain research and development to be conducted, in partnership with the Government and other NSATC Members, for the US Army National Small Arms Center (NSAC) in the area of small arms weapons systems; (3) to develop, maintain, and execute a flexible multi-year master research plan in the area of small arms weapons systems technology that clearly defines performance goals and maximizes the collective capabilities of Government, industry and academia and focus those capabilities toward attainment of sound technical solutions consistent with these goals; (4) to provide a unified and coordinated message to the US Government's legislative branch and the Department of Defense (DOD) community as to the strategically important role small arms weapons and munitions technologies will play in current and future weapons system development; and (5) to define programs and obtain program funding that is focused on the development, demonstration and transition of key technologies that will result in current weapons system improvements or the fielding of new systems. Production of field worthy products based on the R&D activities of the NSATC or technologies developed by the NSATC is limited to prototypes and, in certain cases, early production. All other production will be done outside the consortium.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–12059 Filed 5–27–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on April 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its memberships status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aeroflex International Ltd., Stevenage, united Kingdom; Analog Devices, Norwood, MA; Fujitsu Ltd., Tokyo, Japan; Philips Semiconductors,

Inc., San Jose, CA; Tensolite Company, St. Augustine, FL; Tokyo Cathode Laboratory Co., Ltd., Tokyo, Japan; and Xander, Inc., Petaluma, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc., intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test consortium, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on February 4, 2004. A notice was filed with the Department on February 4, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 2004 (69 FR 10263).

Dorothy B. Fountain,

Director of Operations, Antitrust Division.

[FR Doc. 04–12058 Filed 5–27–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Child Labor Education Initiative

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of intent to solicit cooperative agreement applications.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to award approximately U.S. $5.5 million to organizations to develop and implement formal, non-formal, and vocational education programs as a means to combat exploitative child labor in the following countries: Colombia, Guinea, and Niger. ILAB intends to solicit cooperative agreement applications from qualified organizations (*i.e.*, any commercial, international, educational, or non-profit organization capable of successfully developing and implementing education programs) to implement programs that promote school attendance and provide educational opportunities for working children or children at risk of starting to work. The programs should focus on innovative ways to address the many gaps and challenges to basic education found in the countries mentioned above. Please refer to *http://www2.dol.gov/ILAB/grants/main.htm* for an example of a previous notice of availability of funds and solicitation for cooperative agreement applications.

DATES: Specific solicitations for cooperative agreement applications will be published in the **Federal Register** and remain open for at least 30 days from the date of publication. All cooperative agreements awarded will be made before September 30, 2004.

ADDRESSES: Once solicitations are published in the **Federal Register**, applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov.* All inquiries should make reference to the USDOL Child Labor Education Initiative—Solicitations for Cooperative Agreement Applications.

SUPPLEMENTARY INFORMATION: Since 1995, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC). ILAB has provided over $270 million to ILO–IPEC and other organizations for international technical assistance to combat abusive child labor around the world.

In its FY 2004 appropriations, in addition to funds earmarked for ILO–IPEC, USDOL received $37 million to provide bilateral assistance to improve access to basic education in international areas with a high rate of abusive and exploitative child labor. All such FY 2004 funds will be obligated prior to September 30, 2004.

USDOL's Child Labor Education Initiative nurtures the development, health, safety, and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Eliminating the worst forms of child labor will depend in part on improving access, quality, and relevance of education. Without improving educational quality and relevance, children withdrawn from the worst forms of child labor may not have viable alternatives and may return to work or resort to other hazardous means of subsistence.

The Child Labor Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

3. Strengthen national institutions and policies on education and child labor; and

4. Ensure the long-term sustainability of these efforts.

When working to increase access to quality basic education, USDOL strives to complement existing efforts to eradicate the worst forms of child labor, to build on the achievements of and lessons learned from these efforts, to expand impact and build synergies among actors, and to avoid duplication of resources and efforts.

Signed at Washington, DC, this 24th day of May, 2004.

Johnny Arnold,

Acting Grant Officer.

[FR Doc. 04–12101 Filed 5–27–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in

accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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New Hampshire
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davis.bacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 20th day of May, 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–11798 Filed 5–27–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''American Time Use Survey (ATUS).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 27, 2004.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–5118 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–5118. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

According to economist William Nordhaus, ''Inadequate data on time use is the single most important gap in Federal statistics'' (1997). Approximately 50 other countries collect, or will soon collect, time-use data. Such data are considered important indicators of quality of life. They measure, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS develops nationally representative estimates of how people spend their time. Respondents also report who was with them during activities, where they were, how long each activity lasted, and if they were paid.

All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, lawyers, and others, potentially answering the following questions:

- Do the ways people use their time vary across demographic and labor force characteristics, such as age, sex, race, ethnicity, employment status, earnings, and education?
- How much time do parents spend in the company of their children, either actively providing care or being with them while socializing, relaxing, or doing other things?
- How are earnings related to leisure time—do those with higher earnings spend more or less time relaxing and socializing?
- Where do people work—at a workplace, in their homes, or someplace else?
- For application in personal injury or wrongful death cases, how much non-market work, such as child care or housework, is done by members of selected demographic groups? This input helps lawyers to approximate a value of such work in these cases.

The ATUS data are collected on an ongoing, monthly basis, so time series data will eventually become available, allowing analysts to identify changes in how people spend their time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the collection of this information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information that is collected; and
- Minimize the burden of the collection of information on those asked to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the revision of the American Time Use Survey. This survey collects information on how individuals in the United States use their time. Collection is done on a continuous basis with sample drawn monthly. The survey sample is drawn from households completing their final month of interviews for the Current Population Survey (CPS). Households are selected to ensure a representative demographic sample, and one individual from each household is selected to take part in one Computer Assisted Telephone Interview. The interview asks respondents to report all of their activities for one pre-assigned 24-hour day, the day prior to the interview. A short series of summary questions and CPS updates follows the core time diary collection. After each full year of collection, annual national estimates of time use for an average weekday or weekend day will be available. Eventually, time series data will be available.

Because the ATUS sample is a subset of households completing interviews for the CPS, the same demographic information collected from that survey is available for the ATUS respondents. Comparisons of activity patterns across characteristics such as sex, race, age, and education of the respondent, as well as the presence of children and the number of adults living in the respondent's household are possible.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: American Time Use Survey.

OMB Number: 1220–0175.

Affected Public: Individuals.

Total Respondents: 14,000.

Frequency: Monthly.

Total Responses: 14,000.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 4,670 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 17th day of May, 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–12102 Filed 5–27–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. D & D Anthracite Coal Company

[Docket No. M–2004–020–C]

D & D Anthracite Coal Company, 409 W. Centre Street, Donaldson, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.335 (Construction of seals) to its Primrose Slope Mine (MSHA I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner proposes to use wooden materials of moderate size and weight for constructing seals due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Spartan Mining Company

[Docket No. M–2004–021–C]

Spartan Mining Company, HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Laurel Creek Coalburg Mine (MSHA I.D. No. 46–08387) located in Boone County, West Virginia. The petitioner proposes to transfer high-voltage, 2,400-volt continuous miner equipment from one mine to another mine within the Spartan Mining Company. The petitioner states that all personnel who perform maintenance on the high-voltage continuous miner system will receive training in high-voltage safety, testing, and maintenance procedures; and all personnel who work in proximity of high-voltage equipment or move high-voltage equipment or cable(s) will receive training, before implementation of the proposed alternative method. The petitioner further states, that the high-voltage continuous mining system will not be put into service until after MSHA has inspected the equipment and determined that it is in compliance with the specific terms and conditions listed in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. KenAmerican Resources, Inc.

[Docket No. M–2004–022–C]

KenAmerican Resources, Inc., 7590 State Route 181, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (Automatic fire sensor and warning device systems; installation; minimum requirements) to its Paradise #9 Mine (MSHA I.D. No. 15–17741) located in Muhlenberg County, Kentucky. The petitioner proposes to monitor the belt drive, take-up and tailpiece by a monitoring device located in the belt entry not more than 100-feet downwind of the tailpiece, belt drive and take-up in the same split of air where a belt line discharges onto a belt conveyor tailpiece. The petitioner states that its current Carbon Monoxide Monitoring System plan states that: ''where carbon monoxide sensors are used, they will be installed where a belt drive discharges onto a belt conveyor tailpiece, and the tailpiece will be monitored by a monitoring device located in the belt entry not more than 100 feet downwind of that tailpiece. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Stillwater Mining

[Docket No. M–2004–005–M]

Stillwater Mining, P.O. Box 1227, Big Timber, Montana 59011 has filed a petition to modify the application of 30 CFR 57.9260 (Supplies, materials, and tools on mantrips) to its East Boulder Mine (MSHA I.D. No. 24–01879) located in Sweet Grass County, Montana. The petitioner request a modification of the existing standard to allow a factory designed, commercially marketed Brookville Mining Equipment Corporation Locomotive/Personnel Carrier, equipped with fifteen-person seating, to pull ore or supplies while transporting passengers on the locomotive. The petitioner asserts that the proposed alternative method would

provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* by fax at (202) 693–9441, or by regular mail to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before June 28, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 24th day of May, 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–12117 Filed 5–27–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Agreements in Force as of December 31, 2003 Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

AGENCY: Office of the Federal Register, NARA.

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Taipei Economic and Cultural Representative Office in the United States (formerly the Coordination Council for North American Affairs) in order to maintain cultural, commercial and other unofficial relations between the American people and the people of Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people of Taiwan are maintained on a non-governmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) was established as the nongovernmental Taiwan counterpart to AIT. On October 10, 1995 the CCNAA was renamed the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Under section 12 of the Act, agreements concluded between AIT and TECRO (CCNAA) are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, Suite 1700, Arlington, Virginia, 22209. For further information, please telephone (703) 525–8474, or fax (703) 841–1385.

Following is a list of agreements between AIT and TECRO (CCNAA) which were in force as of December 31, 2003.

Dated: May 21, 2004.

Barbara J. Schrage,

Managing Director ad interim, American Institute in Taiwan.

Dated: May 25, 2004.

Raymond A. Mosley,

Director of the Federal Register.

AIT–TECRO Agreements in Force as of December 31, 2003

Status of TECRO

The Exchange of Letters concerning the change in the name of the Coordination Council for North American Affairs (CCNAA) to the Taipei Economic and Cultural Representative Office in the United States (TECRO). Signed December 27, 1994 and January 3, 1995. Entered into force January 3, 1995.

Agriculture

1. Guidelines for a cooperative program in the agriculture sciences. Signed January 15 and 28, 1986. Entered into force January 28, 1986.

2. Amendment amending the 1986 guidelines for a cooperative program in the agricultural sciences. Effected by exchange of letters September 1 and 11, 1989. Entered into force September 11, 1989.

3. Cooperative service agreement to facilitate fruit and vegetable inspection through their designated representatives, the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Taiwan Provincial Fruit Marketing Cooperative (TPFMC) supervised by the Taiwan Council of Agriculture (COA). Signed April 28, 1993. Entered into force April 28, 1993.

4. Memorandum of agreement concerning sanitary/phytosanitary and agricultural standards. Signed November 4, 1993. Entered into force November 4, 1993.

5. Agreement amending the guidelines for the cooperative program in agricultural sciences. Signed October 30, 2001. Entered into force October 30, 2001.

Aviation

1. Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation (NAT–I–845), with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.

2. Amendment amending the memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981. Signed September 18 and 23, 1985. Entered into force September 3, 1985.

3. Agreement amending the memorandum of agreement of September 24 and October 23, 1981, concerning aeronautical equipment and services. Signed September 23 and October 17, 1991. Entered into force October 17, 1991.

4. Air transport agreement, with annexes. Signed at Washington March 18, 1998. Entered into force March 18, 1998.

5. Agreement for promotion of aviation safety. Signed June 30, 2003. Entered into force June 30, 2003.

Conservation

1. Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.

2. Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington October 5, 1992. Entered into force October 5, 1992.

3. Agreement on technical cooperation in conservation of flora and fauna. Signed April 7, 1999. Entered into force April 7, 1999.

4. Memorandum of understanding concerning cooperation in fisheries and aquaculture. Signed July 30, 2002. Entered into force July 30, 2002.

Consular

1. Agreement regarding passport validity. Effected by exchange of letters of August 26 and November 13, 1998. Entered into force December 10, 1998.

Customs

1. Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.

2. Agreement on TECRO/AIT carnet for the temporary admission of goods. Signed June 25, 1996. Entered into force June 25, 1996.

3. Agreement regarding mutual assistance between their designated representatives, the United States Customs Administration and the Taiwan Customs Administration. Signed January 17, 2001. Entered into force January 17, 2001.

Education and Culture

1. Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei April 14 and June 4, 1979. Entered into force June 4, 1979.

2. Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983. Entered into force February 3, 1983.

Energy

1. Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.

2. Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.

3. Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University. Signed November 28, 1990.

4. Agreement Amending and Extending the Agreement of October 3, 1984, as amended and extended, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 3, 1994. Entered into force October 3, 1994.

5. Agreement concerning safeguards arrangements for nuclear materials transferred from France to Taiwan. Effected by exchange of letters February 12 and May 13, 1993. Entered into force May 13, 1993.

6. Agreement relating to participation in the USNRC program of severe accident research, with appendix. Signed February 18 and June 24, 1993. Entered into force June 24, 1993, effective January 1, 1993.

7. Agreement regarding participation in the Second USNRC International Piping Integrity Research Group Program, with addendum. Signed at Arlington and Washington February 7 and June 30, 1994. Entered into force June 30, 1994.

8. Memorandum of Agreement for release of an Energy and Power Evaluation Program (ENPEP) computer software package. Signed January 25 and February 27, 1995. Entered into force February 27, 1995.

9. Agreement relating to participation in the USNRC's program of thermal-hydraulic code applications and maintenance. Signed January 5 and June 26, 1998. Entered into force June 26, 1998.

10. Agreement regarding terms and conditions for the acceptance of foreign research reactor spent nuclear fuel at the Department of Energy's Savannah River site. Signed December 28, 1998 and February 25, 1999. Entered into force February 25, 1999.

11. Agreement in the area of probabilistic risk assessment research. Signed July 20 and December 27. Entered into force January 1, 1999.

12. Agreement relating to the participation in the United States Nuclear Regulatory Commission program of severe accident research. Signed May 15, 2003 and August 8, 2003. Entered into force August 8, 2003, effective January 1, 2003.

Environment

1. Agreement for technical cooperation in the field of environmental protection, with implementing arrangement. Signed June 21, 1993. Entered into force June 21, 1993.

2. Agreement extending the agreement of June 21, 1993 for technical cooperation in the field of environmental protection. Effected by exchanges of letters June 30 and July 20 and 30, 1998. Entered into force July 30, 1998, effective June 21, 1998.

3. Agreement extending the agreement for technical cooperation in the field of environmental protection. Signed September 23, 2003. Entered into force September 23, 2003.

Health

1. Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.

2. Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.

3. Agreement amending the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.

4. Agreement amending the 1984 guidelines for a cooperative program in the biomedical Sciences, as amended, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.

5. Guidelines for a cooperative program in public health and preventive medicine. Signed at Arlington and Washington June 30 and July 19, 1994. Entered into force July 19, 1994.

6. Agreement for technical cooperation in vaccine and immunization-related activities, with implementing arrangement. Signed at Washington October 6 and 7, 1994. Entered into force October 7, 1994.

7. Agreement regarding the mutual exchange of information on medical devices, including quality systems requirements inspectional information. Effected by exchange of letters January 9, 1998. Entered into force January 9, 1998.

Intellectual Property

1. Agreement concerning the protection and enforcement of rights in audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and 27, 1989. Entered into force June 27, 1989.

2. Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.

3. Agreement for the protection of copyrights, with appendix. Signed July 16, 1993. Entered into force July 16, 1993.

4. Memorandum of understanding regarding the extension of priority filing rights for patent and trademark applications. Signed April 10, 1996. Entered into force April 10, 1996.

Judicial Assistance

1. Memorandum of understanding on cooperation in the field of criminal investigations and prosecutions. Signed at Taipei October 5, 1992. Entered into force October 5, 1992.

2. Agreement on mutual legal assistance in criminal matters. Signed March 26, 2002. Entered into force March 26, 2002.

Labor

1. Guidelines for a cooperative program in labor affairs. Signed December 6, 1991. Entered into force December 6, 1991.

2. Guidelines for a cooperative program in labor mediation and alternative dispute resolution. Signed April 7, 1995. Entered into force April 7. 1995.

Mapping

1. Agreement concerning mapping, charting, and geodesy cooperation. Signed November 28, 1995. Entered into force November 28, 1995.

Maritime

1. Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and September 7, 1982. Entered into force September 7, 1982.

2. Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.

3. Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

4. Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships, 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

5. Agreement concerning mutual implementation of the 1966 international convention on load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985. Entered into force April 10, 1985.

6. Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

Military Sales

1. Agreement for foreign military sales financing by the authorities on Taiwan. Signed January 4 and July 12, 1999. Entered into force July 12, 1999.

Postal

1. Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19 and November 26, 1990. Entered into force November 26, 1990.

2. International business reply service agreement, with detailed regulations. Signed at Washington February 7, 1992. Entered into force February 7, 1992.

Privileges and Immunities

1. Agreement on privileges, exemptions and immunities, with addendum. Signed at Washington October 2, Entered into force October 2, 1980.

2. Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

Scientific and Technical Cooperation

1. Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

2. Agreement concerning renewal and extension of the 1980 agreement on scientific cooperation. Signed March 10, 1987. Entered into force March 10, 1987.

3. Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

4. Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

5. Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

6. Agreement for technical cooperation in meteorology and forecast systems development, with implementing arrangements. Signed June 5 and 28, 1990. Entered into force June 28, 1990.

7. Agreement extending the agreement of November 17, 1987, for a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed August 8, 1990. Entered into force August 8, 1990.

8. Cooperative program on Hualien soil-structure interaction experiment. Signed September 28, 1990.

9. Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

10. Cooperative program in highway-related sciences. Signed October 30, 1990 and January 7, 1992. Entered into force January 7, 1992.

11. Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction. *Name changed to Agreement for Technical Assistance in Areas of Water Resource Development. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

12. Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

13. Agreement amending the Agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed August 30 and September 3, 1996. Entered into force September 3, 1996.

14. Agreement concerning joint studies on reservoir sedimentation and sluicing, including computer modeling. Signed February 14 and March 8, 1996. Entered into force March 8, 1996.

15. Guidelines for a cooperative program in physical sciences. Signed January 2 and 10, 1997. Entered into force January 10, 1997.

16. Agreement for scientific and technical cooperation in ocean climate research. Signed February 18, 1997. Entered into force February 18, 1997.

17. Agreement amending the agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed October 14, 1997. Entered into force October 14, 1997.

18. Agreement for technical cooperation in scientific and weather technology systems support. Signed October 22 and November 5, 1997. Entered into force November 5, 1997.

19. Agreement for technical cooperation associated with establishment of advanced operational aviation weather systems. Signed February 10 and 13, 1998. Entered into force February 13, 1998.

20. Agreement for technical cooperation associated with development, launch and operation of a constellation observing system for meteorology, ionosphere and climate. Signed May 29 and June 30, 1999. Entered into force June 30, 1999.

21. Agreement on the International Research Institute for Climate Prediction, with attachments. Signed October 20, 2000 and October 26, 2000. Entered into force October 26, 2000.

22. Agreement for technical cooperation on neutron scattering research. Signed February 8, 2001. Entered into force February 8, 2001.

23. Agreement for technical cooperation in meteorology and forecast systems development. Signed June 12, 2001 and June 20, 2001. Entered into force June 20, 2001.

24. Agreement for cooperation on the tropical rainfall-measuring mission (TRMM). Signed February 6, 2002 and April 2, 2002. Entered into force April 2, 2002.

Security of Information

1. Protection of information agreement. Signed September 15, 1981. Entered into force September 15, 1981.

Taxation

1. Agreement concerning the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

2. Agreement for technical assistance in tax administration, with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

Trade

1. Agreement concerning trade matters, with annexes. Effected by exchange of letters at Arlington and Washington October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980.

2. Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington December 31, 1981. Entered into force December 31, 1981.

3. Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

4. Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington October 9, 1986. Entered into force October 9, 1986.

5. Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entered into force December 12, 1986, effective January 1, 1987.

6. Agreement implementing the agreement of December 12, 1986 concerning beer, wine and cigarettes. Effected by exchange of letters at Taipei April 29, 1987. Entered into force April 29, 1987, effective January 1, 1987.

7. Agreement concerning trade in whole turkeys, turkey parts, processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington March 16, 1989. Entered into force March 16, 1989.

8. Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

9. Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

10. Agreement regarding new requirements for health warning legends on cigarettes sold in the territory represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

11. Memorandum of understanding concerning a new quota arrangement for cotton and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

12. Memorandum of understanding on the exchange of information concerning commodity futures and options matters, with appendix. Signed January 11, 1993. Entered into force January 11, 1993.

13. Agreement concerning a framework of principles and procedures for consultations regarding trade and investment, with annex. Signed at Washington September 19, 1994. Entered into force September 19, 1994.

14. Visa arrangement concerning textiles and textile products. Effected by exchange of letters of April 30 and September 3, and 23, 1997. Entered into force September 23, 1997.

15. Agreement concerning trade in cotton, wool, man-made fiber, silk blend and other non-cotton vegetable fiber textile products, with attachment. Effected by exchange of letters December 10, 1997. Entered into force December 10, 1997, effective January 1, 1998.

16. Agreed minutes on government procurement issues. Signed December 17, 1997. Entered into force December 17, 1997.

17. Understanding concerning bilateral negotiations on the WTO accession of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and the United States. Signed February 20, 1998. Entered into force February 20, 1998.

18. Agreement on mutual recognition for equipment subject to electro-magnetic compatibility (EMC) regulations. Signed March 16, 1999. Entered into force March 16, 1999.

19. Agreement concerning the Asia Pacific Economic Cooperation mutual recognition arrangement for conformity assessment of telecommunications equipment (APEC Telecon MRA). Signed March 16, 1999. Entered into force March 16, 1999.

20. Memorandum of understanding on the extension of trade in textile and apparel products. Signed February 9, 2001. Entered into force February 9, 2001.

[FR Doc. 04–12118 Filed 5–27–04; 8:45 am]

BILLING CODE 4710–49–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for GPRA Performance Assessment (13853); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for GPRA Performance Assessment (AC/GPA).

Date and Time: June 22, 2004, 8:30 a.m.–5:30 p.m. June 23, 2004, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 375. If you are attending the meeting and need access to the NSF building, please contact Carol Heffner *cheffner@nsf.gov* for a visitor's badge.

For Further Information Contact: Joan Miller, Administrative Manager, BFA, National Science Foundation, Room 405, Arlington, Virginia. Phone: 703–292–8200.

Type of Meeting: Open.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) Director regarding the Foundation's performance as it relates to the Government Performance and Results Act of 1993 (GPRA).

Agenda: Topics include retrospective accomplishments of NSF awards as they relate to performance indicators associated with the National Science Foundation's People, Ideas, Tools, (P, I, T) and Organizational Excellence (OE) strategic outcome goals; the quality, relevance, and balance of NSF award portfolios; and issues involving innovative, risky, and multidisciplinary research and education proposals.

Tuesday, June 22, 2004

Welcome and Introductions; Charge to the Committee; Overview Presentations on the NSF Strategic Plan and Budget, Performance Assessment, and the Organizational Excellence (OE) goal. The Committee will then divide into subgroups to review and discuss retrospective accomplishments under the People, Ideas, Tools, and OE goals.

Wednesday, June 23, 2004

The Committee reconvenes as a Committee of the Whole to hear progress reports from the P, I, T, and OE subgroups and then divides into those subgroups for further discussion. In the afternoon, the Committee of the Whole reconvenes to discuss its findings, recommendations, and preparation of the final report.

Dated: May 24, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–12123 Filed 5–27–04; 8:45 am]

BILLING CODE 7555–01–M

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:* NRC Form 314, Certificate of Disposition of Materials.

3. *The form number if applicable:* NRC Form 314.

4. *How often the collection is required:* The form is submitted once, when a licensee terminates its license.

5. *Who will be required or asked to report:* Persons holding an NRC license for the possession and use of radioactive byproduct, source, or special nuclear material who are ceasing licensed activities and terminating the license.

6. *An estimate of the number of annual responses:* 310.

7. *The estimated number of annual respondents:* 310.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 155.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC Form 314 furnishes information to NRC regarding transfer or other disposition of radioactive material by licensees who wish to terminate their licenses. The information is used by NRC as part of the basis for its determination that the facility has been cleared of radioactive material before the facility is released for unrestricted use.

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 worldwide 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 28, 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 (3150–0028), 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 at Rockville, Maryland, this 24th day of May, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–12100 Filed 5–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its December 13, 2002, application for proposed amendment to Facility Operating License No. NPF–90 for the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would have revised the WBN Unit 1, Technical Specifications to add two new sections, 3.7.16, ''Shutdown Board Room (SDBR) Air Conditioning System (ACS),'' and 3.7.17, ''Elevation 772.0 480 Volt Board Room Air Conditioning (AC) systems.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 18, 2003 (68 FR 12958). However, by letter dated April 30, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, *see* the application for amendment dated December 13, 2002, and the licensee's letter dated April 30, 2004, which withdrew the application for license amendment. 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 O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* 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 21st day of May, 2004.

For the Nuclear Regulatory Commission.

Manny M. Comar,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–12099 Filed 5–27–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49759; File No. SR–Amex–2004–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Adoption of Procedures for the Transfer of Options Positions

May 24, 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 May 14, 2004, the American Stock Exchange LLC (''Amex'' 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 Amex. Pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] Amex has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

Amex proposes to amend Exchange Rule 959 to adopt procedures for the on-floor transfer of options positions that are being transferred as part of a sale or disposition of all, or substantially all, of the assets or options of the transferring party. The text of the proposed rule change is available at Amex and at the Commission.

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

In its filing with the Commission, Amex 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. Amex 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 establish which position transfers may occur off-floor and which position transfers must be offered to the floor. Specifically, the Exchange proposes to amend Rule 959 to allow for the on-floor transfer of options positions that are being transferred as part of a sale or disposition of all, or substantially all, of the assets or option positions of a specialist or registered options trader (''ROT''), who would no longer be involved in managing or owning the transferred positions. The procedures established by this proposal would be used by specialists and ROTs who, for reasons other than a forced liquidation, desire to liquidate their entire, or nearly entire position in a single set of transactions. In addition, specialists and ROTs would also be able to use these procedures in preparation for or during lengthy absences from the trading floor, such as an extended vacation. However, these procedures are not intended to replace the Exchange's auction market, and accordingly, frequent use of the procedures by the same specialist or ROT will not be permitted.

Pursuant to the proposal, the specialist or ROT (referred to hereinafter as the ''Transferor'') would determine which securities to package with the Amex-traded option positions in the portfolio. The Transferor would be able to include other exchange-listed or NASDAQ NMS securities as well as option contracts in the package to be transferred (''Transfer Package'') provided the positions are being transferred pursuant to a discontinuation of the management or ownership of the options positions. Any number of Transfer Packages can be created, provided each Transfer Package contains positions in only one option class. This limitation ensures that smaller specialists and ROTs are able to compete against larger member organizations in the bidding for the Transfer Package, thus ensuring a broader participation by the membership of the Exchange. The proposed rule provides, however, that a member or member organization may make an aggregate bid or offer for any number of Transfer Packages offered by a single Transferor. In the event that the aggregate bid or offer is superior to the combination of the individual best bids or offers for the individual Transfer Packages, the Transferor would be allowed to accept that aggregate bid or offer for a combination of, or all of, the Transfer Packages. The Exchange believes that allowing Transferors to accept aggregate bids or offers would ensure that they get the best possible price for their positions.

Transfer Packages would be offered using the procedures for the trading of Flexible Exchange Options (''FLEX'') [5] and would be required to be submitted to the specialist for that option class prior to 2 p.m. Under the proposed procedures, any firm submitting a Transfer Package would be required to designate a member of the Exchange or a person associated with a member to represent the order on the floor of the Exchange. This designee must be available on the Exchange floor to answer questions regarding the Transfer Package during the entire Request Response Time. Following the offer of the Transfer Packages, interested members of the Exchange would be given two hours to submit a bid for one or any combination of the Transfer Packages offered by the Transferor. Acceptance of a best bid or offer (''BBO'') would create a binding contract under Amex Rule 953, however, a Transferor is not obligated to accept a BBO. If the Transferor does not accept the BBO for the Transfer Packages, the Transferor may offer the positions in any Transfer Package the following business day. Because the Exchange intends for this proposed procedure to be a transfer procedure and not a price discovery mechanism, the Transferor would need the permission of a Floor Governor to offer the positions on the Exchange floor for any day subsequent to the second day.

Bids and offers would be made on a net debit or credit basis for entire Transfer Packages. In the event that a particular Transfer Package contains stock positions or other securities positions whose transfer must be transacted on another exchange pursuant to applicable law or regulation, then any accepted bid or offer would give rise to a contract for the Amex-listed product, the price of which is contingent on the prices at which the other portions of the Transfer Package are transacted. The price at which the Amex-listed product is transacted would be the price that is necessary to ensure that the entire Transfer Package is transferred at the agreed upon net debit or credit. All transactions that are required to be completed would typically be transacted by the end of the trading day on which the bid or offer is made and accepted. The proposed rule also would provide that the member submitting the accepted bid or offer may cancel the trade for the Amex-listed product in the event that the parties are unable to complete the transaction for the non-Amex-listed product due to a trading halt or some other operational problem outside the control of the submitting party.

The Exchange believes that the proposed procedures should provide Transferors a more favorable bid or offer for their options positions since the other securities in the package may hedge or otherwise complement the options positions and result in more favorable pricing for the overall package.

The proposed rule would serve to expose the maximum number of positions to the auction market. The Exchange believes that exposing these positions to the auction market would benefit the public by increasing the liquidity and transparency of the market in the listed option positions. We further believe that the membership would benefit by being given the opportunity to bid on the positions.

Exemptions

The Exchange represents that it generally prohibits the off-floor transfers of options positions between accounts, individuals or entities where a change of beneficial ownership results.

[5] *See* Exchange Rules 900G et al.

However, the Exchange recognizes that there may be circumstances where an off-floor transfer may be justified, such as emergency transfers of a firm's positions in bulk during a market crisis. In an extremely volatile market, the Transferor may be subject to undue risk if he were forced to subject his positions to the auction process established by the proposed rule because there may be some delay in agreeing to a price. In these circumstances, the Exchange represents that its Chief Executive Officer or his designee may, on his own initiative or upon request from the Transferor, exempt the transfer from the proposed rule and permit an off-floor transfer to occur. The Exchange states that another basis for exempting the transfer from the proposed rule would be a showing by the Transferor to the Chief Executive Officer or his designee that compliance with the proposed rule would compromise the market value of the Transferor's business.

The Exchange represents that there are several other circumstances where it would not require the transfer to be completed on the Exchange floor, even in situations where the Transferor does not maintain ownership or management of the positions. These exemptions found in the proposed Rule generally relate to changes to the member's legal status or trading account. In addition, positions donated to a not-for-profit organization or positions donated to a minor under the ''Uniform Gifts to Minor'' law would not have to be brought to the Exchange floor pursuant to the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

Amex 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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

Amex neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective upon filing on May 14, 2004 pursuant to section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. Amex seeks to have the proposed rule change become effective immediately to allow it to implement the proposed procedures for transferring the options positions of specialists and ROTs that are being transferred as part of a sale or disposition.

The Commission has determined to waive the 30-day operative date requirement for this proposed rule change, and designate the proposed rule change as operative on May 14, 2004, the date it was submitted to the Commission.[12] The Commission notes that the proposed rule change is similar to rules of the Pacific Exchange, Inc. and Chicago Board Options Exchange, which were previously approved by the Commission.[13] Accordingly, because the proposed rule change does not raise any new regulatory concerns, the Commission has determined that it is consistent with the protection of investors and the public interest to designate the proposed rule change as operative on May 14, 2004. 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.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] As required under Rule 19b–4(f)(6)(iii), Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–Amex–2004–35 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–Amex–2004–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW.,

[13] *See* Securities Exchange Act Release Nos. 36647 (December 28, 1995) (Order approving CBOE Rule 6.49A); and 45395 (February 5, 2002) (Order approving PCX Rule 6.78(d)).

Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. 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–Amex–2004–35 and should be submitted on or before June 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12111 Filed 5–27–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49758; File No. SR–PCX–2004–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Arbitration

May 24, 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 May 11, 2004, the Pacific Exchange, Inc. (''PCX'' 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 PCX. PCX filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] 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 Exchange and its wholly owned subsidiary PCX Equities, Inc. (''PCXE'') are proposing to extend the pilot rule in PCX Rule 12.1, Commentary .02 and PCXE Rule 12.2(h), which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for a six-month pilot period.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On November 21, 2002, the Commission approved, for a six-month pilot period, the Exchange's proposal to amend PCX and PCXE arbitration rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers or, in employment discrimination cases, upon the request of associated persons.[5] The Commission approved an extension of the pilot period on May 15, 2003,[6] and November 19, 2003.[7] The pilot period is currently set to expire on May 23, 2004.

On July 1, 2002, the Judicial Council of the State of California adopted new rules that mandated extensive disclosure requirements for arbitrators in California (the ''California Standards''). The California Standards are intended to address perceived conflicts of interest in certain commercial arbitration proceedings. As a result of the imposition of the California Standards on arbitrations conducted under the auspices of self-regulatory organizations (''SROs''), the National Association of Securities Dealers, Inc. (''NASD'') and the New York Stock Exchange (''NYSE'') suspended the appointment of arbitrators for cases pending in California, and filed a joint complaint in Federal court for declaratory relief in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE because the California Standards are preempted by Federal law and are inapplicable to SROs under State law.[8] Subsequently, in the interest of continuing to provide investors with an arbitral forum in California pending the resolution of the applicability of the California Standards, NASD and NYSE filed separate rule proposals with the Commission that would temporarily require their members to waive the California Standards if all non-member parties to arbitration have done so. The Commission approved the NASD's rule proposal on September 26, 2002,[9] and the NYSE's rule proposal on November 12, 2002.[10] Both the NASD and the NYSE filed rule proposals to further extend the pilot period for additional six-month periods.[11]

Since the NASD's and NYSE's lawsuit relating to the application of the California Standards has not been resolved, PCX is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to SROs).[12] PCX requests that the pilot be extended for six months beginning on May 24, 2004. The extension of time permits the Exchange to continue the arbitration process using PCX rules regarding arbitration disclosures and not the California

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR–PCX–2002–71).

[6] *See* Exchange Act Release No. 47872 (May 15, 2003), 68 FR 28869 (May 27, 2003) (Order approving SR–PCX–2003–22).

[7] *See* Exchange Act Release No. 48806 (November 19, 2003), 68 FR 66521 (November 26, 2003) (Order approving SR–PCX–2003–61).

[8] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California,* filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *http://www.nasdadr.com/pdf-text/072202_ca_complaint.pdf.*

[9] *See* Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR–NASD–2002–126).

[10] *See* Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR–NYSE–2002–56).

[11] *See* Exchange Act Release No. 48553 (September 26, 2003), 68 FR 57494 (October 3, 2003) (Order approving SR–NASD–2003–144); Exchange Act Release No. 49452 (March 19, 2004) 69 FR 17010 (March 31, 2004) (Order approving SR–NASD–2004–40); Exchange Act Release No. 48552 (September 26, 2003), 68 FR 57496 (October 3, 2003) (Order approving SR–NYSE–2003–28); and Exchange Act Release No. 49521 (April 2, 2004), 69 FR 18661 (April 8, 2004) (Order approving SR–NYSE–2004–18).

[12] *See also Richard Mayo* v. *Dean Witter Reynolds, Inc. et al.*, C–01–20336 JF (N.D. Cal.) in which the District Court for the Northern District of California held that the California Standards, at least as applied to SROs, are preempted by Federal law. As this decision was rendered on April 22, 2003, it is still subject to appeal.

Standards. No substantive changes are being made to the pilot program, other than extending the operation of pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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

PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[16] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[17] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker-dealers. During the period of this extension, the Commission and the Exchange will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–25 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–25. 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 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–2004–25 and should be submitted on or before June 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–12093 Filed 5–27–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49751; File No. SR–Phlx–2004–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Broker-Dealer Equity Option Transaction Fees

May 21, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2004, the 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 May 13, 2004, the Exchange submitted Amendment No. 1 to the proposal.[3] The

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mark I. Salvacion, Director & Counsel, Phlx, to Nathan H. Saunders, Attorney, Division of Market Regulation, Commission, dated May 12, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange revised the filing to clarify the purpose of the proposed rule change and to correct a typographical error in the text of the proposed rule change.

proposed rule change, as amended, 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 [4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 increase certain broker-dealer equity option transaction charges for orders delivered through the Philadelphia Stock Exchange Automated Options Market (''AUTOM'') System [6] to $.45 per contract, without regard to whether such contracts are executed automatically or manually. The Exchange has implemented this fee on transactions settling on or after May 1, 2004. All other equity option transaction charges remain unchanged. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; language to be deleted is in brackets.

SUMMARY OF EQUITY OPTION CHARGES

* * * * *

Option Transaction Charge	
* * * * *	
Broker/Dealer [11] (AUTOM–delivered)	*$.45 per contract*
Broker/Dealer[11] *[12]* (non-[AUTO–X]*AUTOM–delivered*) and Linkage ''P'' Orders[12] *[13]*	
Up to 2,000 contracts	$.35 per contract
Between 2,001 and 3,000 contracts	$.25 per contract (for all contracts)
Residual above 3,000 contracts	$.20 per contract above 3,000 contracts (with the first 3,000 contracts charged $.25 per contract)
[Broker/Dealer [13] (AUTO–X)	$.45 per contract]
* * * * * * *	

[11] For the purpose of this Summary of Equity Option Charges, this charge applies to members for transactions, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of an ROT entered from off-floor.

[12] *See footnote 11.* [Fees for linkage ''P'' Orders are subject to a pilot program scheduled to expire July 31, 2004.]

[13] [See footnote 11.] *Fees for linkage ''P'' Orders are subject to a pilot program scheduled to expire July 31, 2004.*

* * * * *

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 establish a uniform charge for all broker-dealer orders delivered via AUTOM, regardless of whether those orders are executed automatically or manually. Currently, the Exchange charges fees for broker-dealer orders based on the method of execution: transactions that are executed automatically are charged $.45 per contract [7] and transactions that are executed manually are charged up to $.35 per contract.[8] Under the current proposal, broker-dealer orders will be charged based on the method of delivery. Orders delivered via AUTOM will be charged $.45 per contract, regardless of whether they receive automatic or manual execution. Non–AUTOM delivered orders, consisting of manually delivered floor broker orders, including orders transmitted by the Floor Broker Management System (''FBMS''),[9] and Linkage ''P'' orders,[10] will continue to be charged up to $.35 per contract, depending on the size of the order.

2. Statutory Basis

The Exchange believes that its proposal 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 relating to the automatic delivery of off-floor broker-dealer orders. The Exchange believes the proposal is reasonable and equitable because it equalizes transaction costs for broker-dealers delivering orders to the Exchange via AUTOM, without regard to the manner in which they are executed.

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 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 were neither solicited nor received with respect to the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 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. 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. *See* Exchange Rule 1080.

[7] *See* Securities Exchange Act Release No. 47109 (December 30, 2002), 68 FR 841 (January 7, 2003)(SR–Phlx–2002–78).

[8] *See* Securities Exchange Act Release No. 47715 (April 22, 2003), 68 FR 22446 (April 28, 2003)(SR–Phlx–2003–26).

[9] *See* Exchange Rule 1063(e) and Exchange Rule 1080, Commentary .06.

[10] *See* Securities Exchange Act Release No. 47953 (May 30, 2003), 68 FR 34027 (June 6, 2003)(SR–Phlx–2003–16). Fees for linkage ''P'' orders are subject to a pilot program scheduled to expire on July 31, 2004.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act [13] and Rule 19b–4(f)(2) thereunder,[14] because it changes a fee imposed by the Exchange. 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.[15]

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-2004–25 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-2004–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004–25 and should be submitted on or before June 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12110 Filed 5–27–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b-4(f)(2).

[15] For purposes of calculating the 60 day abrogation period, the Commission considers the period to have begun on May 13, 2004, the date on which the Phlx submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–1995–246]

North American Free Trade Agreement's Land Transportation Standards Subcommittee and Transportation Consultative Group: Annual Plenary Session

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice.

SUMMARY: This notice (1) announces the tenth annual plenary session of the North American Free Trade Agreement's (NAFTA) Land Transportation Standards Subcommittee (LTSS) and the Transportation Consultative Group (TCG) and other related meetings; and (2) invites representatives of non-governmental entities with an interest in land transportation issues to participate in these proceedings and to attend a briefing at a later date. With the exceptions noted below, only U.S., Canadian, and Mexican government officials may attend the plenary and working group meetings.

Background:

The Land Transportation Standards Subcommittee (LTSS) was established by the North American Free Trade Agreement's (NAFTA) Committee on Standards-Related Measures to examine the land transportation regulatory regimes in the United States, Canada, and Mexico, and to seek to make certain standards more compatible. The Transportation Consultative Group (TCG) was formed by the three countries' departments of transportation to address non-standards-related issues that affect cross-border movements among the countries, but that are not included in the NAFTA's LTSS work program (Annex 913.5.a–1).

Meetings and Deadlines:

The tenth annual LTSS/TCG plenary session will be held from June 3 and 4, 2004 at the Hotel Nikko, Campos Eliseos 204, Polanco, Mexico City, Mexico. The following LTSS working groups are expected to meet during the same dates and at the same location: (1) Compliance and Driver and Vehicle Standards; and (2) Hazardous Materials Transportation Standards. The following TCG working groups also are expected to meet: (1) Cross-Border Operations and Facilitation; (2) Rail Safety and Economic Issues; and (3) Science and Technology.

An opportunity will be provided for non-governmental organizations to address officials of the individual working groups regarding issues that concern them and that are within the purview of those working groups. Representatives of the truck, bus, and rail industries, transportation labor unions, brokers and shippers, chemical manufacturers, insurance industry, public safety advocates, and others who wish to take advantage of this opportunity are asked to contact the U.S. chairperson of the group they wish to address. Contact names, addresses and phone numbers are provided later in this notice. Copies of presentations, in English and Spanish, should be mailed to the working group chairs no later than June 2, 2004. This is an opportunity for presenters to voice their concerns, provide technical information, and offer suggestions relevant to achieving greater standards compatibility and improving cross-border trade. While written statements may be of any length, oral presentations will be limited based on the number of presenters to be accommodated. Working group chairs will determine the allowable length of any oral presentation and communicate that to the interested NGOs at least one week prior to the meeting dates. After June 2, statements may be submitted for the record and requests to present oral comments to the working groups will be accommodated only on a time-available basis. Interested parties can make hotel reservations by telephoning Ms. Laura Estrada at the Hotel Nikko at (5255) 283–8700 Ext 8020/7776 and identifying themselves as attendees to the NAFTA LTSS. This will ensure that attendees

receive the meeting room rate. A block of guest rooms has been reserved at the hotel for the nights of June 2, 3 and 4. A credit card is required to guarantee payment for all rooms. The hotel also can be reached by email at: *lestrada@nikko.com.mx* or *tjuarez@nikko.com.mx.*

A briefing to report on the outcome of the meetings will be conducted in room 10234–10236 at DOT at the address below, on July 12, 2004, from 10 a.m. to 12 p.m. Interested parties may notify DOT of their interest in attending this briefing by calling (202) 366–2892 by July 9.

SUPPLEMENTARY INFORMATION: LTSS-related documents, including past working group reports and statements received by DOT from industry associations, transportation labor unions, public safety advocates, and others are available for review in Docket No. OST–95–246, at the address below, Room PL–401, between 9 a.m. and 5 p.m., (EST) Monday through Friday, except national holidays. The Docket, which is updated periodically, may also be accessed electronically at *http://dms.dot.gov.* Information about the ninth plenary session can also be found on the DOT NAFTA Web site at *http://www.dot.gov/NAFTA.*

Address and Phone Numbers: Individuals and organizations interested in participating in working group sessions must send notice of their interest and copies of their presentations by May 31 to one or more of the following working group chairs:

LTSS Working Groups

Compliance and Driver and Vehicle Standards, Tom Kozlowski—(202–366–4049), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590;

Hazardous Materials Transportation Standards, Bob Richard—(202–366–0586), Research & Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

TCG Working Groups

Cross-Border Operations and Facilitation, Maria Lameiro (202–366–2892), Office of International Transportation & Trade, Office of the Secretary of Transportation, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590;

Rail Safety and Economic Issues, Jane Bachner (202–493–6405), Federal Railroad Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590;

Science and Technology, Rich Biter (202–366–5781), Office of the Secretary of Transportation, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC. 20590.

For additional information, call (202) 366–2892.

Dated: May 24, 2004.

Bernestine Allen,

Director, Office of International Transportation and Trade.

[FR Doc. 04–12133 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23–XX–21, Airworthiness Compliance Checklists for Small Airplanes During Major Alterations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC. Proposed AC 23–XX–21 provides guidance material for the creation and use of airworthiness compliance checklists for small airplanes that can be used when making major alterations to small airplanes. Use of these compliance checklists should be limited to alterations that have been determined to be ''major'' alterations, as defined in 14 CFR part 1, but which are not so complex that they require an STC, per FAA Order 8300.10, as amended. Material in this AC is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: Comments must be received on or before July 27, 2004.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Regulations and Policy (ACE–111), 901 Locust Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor Martin, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4138, fax (816) 329–4090.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** A copy of the AC will also be available on the Internet at *http://www.airweb.faa.gov/AC* within a few days.

Comments invited: We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23–XX–21 and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8:30 a.m. and 4 p.m. weekdays, except Federal holidays by making an appointment in advance with the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background: The data and documentation requirements for major alterations can vary considerably. This variation can be attributed to the following: Differing complexity of the alterations, different sources of data submitted, and uncertainty of what data is actually required to show compliance with the applicable regulation during the submission to the FAA. Standardization of particular airplane alterations data submission and process shall be assured through the use of compliance checklists. The FAA will establish a library of checklists that will be periodically updated. This will eliminate the need to generate individual data package requirements when a modifier has performed a modification on a similar aircraft. Each checklist identifies the pertinent regulation as the certification basis of the airplane for the alteration. It also lists the manner in which the data can be approved. Reducing the approval process time requires up front involvement between the FAA and the applicant in project planning, open and constructive communication, and safety-focused project management. Using a compliance checklist should result in a more effective use of FAA and industry resources by establishing standard data and documentation requirements. Accordingly, the FAA is proposing and requesting comments on AC 23–XX–21.

Issued in Kansas City, Missouri on May 19, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12066 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2004, pages 10806–10807.

DATES: Comments must be submitted on or before June 28, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0508.

Form(s): N/A.

Affected Public: A total of 6 airplane engine manufacturers.

Abstract: The date of manufacture and compliance status stamped on a nameplate of each turbojet engine permits rapid determinations by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the United States.

Estimated Annual Burden Hours: An estimated 100 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 21, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–12068 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2004, pages 10806–10807.

DATES: Comments must be submitted on or before June 28, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0569.

Form(s): FAA Forms 5100–100, 5100–101, 5100–108, 5100–126, 5100–127, 5370–1.

Affected Public: A total of 1,950 airport sponsors and planning agencies.

Abstract: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal Funds, and ensure project accomplishments.

Estimated Annual Burden Hours: An estimated 86,028 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 24, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–12177 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2004, pages 10806–10807.

DATES: Comments must be submitted on or before June 28, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

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.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0067.

Form(s): FAA Form 1800–31.

Affected Public: A total of 4,874 aviation trainers.

Abstract: Enplanement data collected from air taxi and commercial operators are required for the calculation of air carrier airport sponsor apportionments as specified by the Airport Improvement Program (AIP), and 49 U.S.C. Part A, Air Commerce Safety, and Part B, Airport Development and Noise.

Estimated Annual Burden Hours: An estimated 563 hours annually.

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 24, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–12178 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program Update And Request for Review; LeHigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by LeHigh-Northampton Airport Authority (LNAA) for LeHigh Valley International Airport (ABE) under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is May 14, 2004.

FOR FURTHER INFORMATION CONTACT: Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, Pennsylvania 17011 (717) 730–2833.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for ABE are in compliance with applicable requirements of Part 150, effective May 14, 2004. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by LNAA. The documentation that constitutes the ''noise exposure maps''as defined in section 150.7 of part 150 includes: The NEM graphics (Figure 31, depicting noise contours for the year 2003 ''existing conditions'' and Figure 32, depicting noise contours for the 2008 forecast conditions) and supporting documentation required by sections 150.21 and A150.101. The supporting documentation includes:

(1) Runway locations, airport boundaries, noise contours, locations of noise-sensitive structures and properties on or eligible for the National Register of Historic Places (Figures 31 and 32, and section 5.1),

(2) Flight tracks (Figures 36 through 45),

(3) Estimates of number of people within the noise contours (section 5.5),

(4) Location of noise monitoring sites (Figure 11 and section 3.2),

(5) Operational assumptions, including fleet mix (section 5.6),

(6) Planned airport development, jurisdictional boundaries, runway end numbers, (Figures 34 and 35, and NEM graphics Figures 31 and 32),

(7) Evidence of consultation required by the regulation (section 6 and Appendix B).

The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on May 14, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill,

Pennsylvania, and Lehigh-Northampton Airport Authority, 3311 Airport Road, Allentown, Pennsylvania. Questions may be directed to the location above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Eastern Region, Harrisburg ADO, May 14, 2004.

Wayne Heibeck,

Manager, Harrisburg Airports District Office.

[FR Doc. 04–12179 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2004, there were three applications approved. This notice also includes information on four applications, one approved in May 2001, a second approved in February 2004, and the other two approved in March 2004, inadvertently left off the May 2001, February 2004, and March 2004 notices, respectively. Additionally, 18 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Midland, Texas.

Application Number: 01–04–C–00–MAF.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $1,493,866.

Earliest Charge Effective Date: July 1, 2016.

Estimated Charge Expiration Date: January 1, 2018.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Reconstruct north apron and drainage fillets.
Rehabilitate runways and taxiways.
Relocate taxiway Z and reconstruction taxiway Z.
Replace aircraft rescue and firefighting facility.
Reconstruct taxiway C–H–P intersection.
Reconstruct south apron.
Acquire two aircraft rescue and firefighting vehicles.

Decision Date: May 23, 2001.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Grand Forks Regional Airport Authority, Grand Forks, North Dakota.

Application Number: 04–06–C–00–GFK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,842,016.

Earliest Charge Effective Date: May 1, 2004.

Estimated Charge Expiration Date: April 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Grand Forks International Airport.

Brief Description of Projects Approved for Collection and Use:

Ecological study.
Rehabilitate C apron, phases 1 and 2.
Rehabilitate runway 17R/35L and improve runway safety area.
Master plan update.
Security fencing, phases 1 and 2.
Acquire land for runway protection zone.
Reconstruct T-hangar taxiway.
Reconstruct B apron.
Runway 35L/17R rejuvenation.
Passenger terminal area study.
Reconstruct A apron.
Rehabilitate entrance road.
Reconstruct U taxiway.
Acquire aircraft rescue and firefighting vehicle.
Snow removal equipment.
Construct rotary wing aircraft parking apron.
Rehabilitation of runway 35R/17L and taxiway C.

Decision Date: February 24, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas T. Schauer, Bismarck Airports District Office, (701) 323–7380.

Public Agency: City of San Angelo, Texas.

Application Number: 04–05–C–00–SJT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $335,042.

Earliest Charge Effective Date: August 1, 2004.

Estimated Charge Expiration Date: January 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Angelo Regional Airport/Mathis Field.

Brief Description of Projects Approved for Collection and Use:

Acquire 1,500 gallon aircraft rescue and firefighting vehicle.
Rehabilitate runways 9/27 and 3/21.
Rehabilitate runway lighting.
Acquire runway 21 runway protection zone land.
Rehabilitate taxiways A, B, C, D, E, F, H and P.

Decision Date: March 24, 2004.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Little Rock Municipal Airport Commission, Little Rock, Arkansas.

Application Number: 04–04–U–00–LIT.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in this Decision: $4,643,300.

Charge Effective Date: September 1, 2001.

Estimated Charge Expiration Date: April 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Runway 4R/22L extension.
Roosevelt Road and Grundfest Drive relocations.

Decision Date: March 29, 2004.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Monroe County Board of County Commissioners, Key West, Florida.

Application Number: 04–07–C–00–EYW.

Application Type: Impose and Use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,420,700.

Earliest Charge Effective Date: May 1, 2004.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers Not Required To Collect PFC'S: (1) air taxi/commercial operators filing FAA Form 1800–31; (2) commuters or small certificated air carriers filing Department of Transportation Form 298–C T1 or E1.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Key West International Airport (EYW).

Brief Description of Projects Approved for Collection at EYW and Use at EYW:

PFC Application.
Hangar/T-hangar taxilanes and apron, design and construction.
New terminal development.
Noise improvement program, phase 3, design and construction.
Noise contour updates.
Runway safety area environmental assessment for runway 9/27.
Runway 9/27 drainage construction (phase 2).
Apron seal coat, design and construction.
Rehabilitation of beacon/tower, design and construction.
Ground vehicle operation video training system.

Brief Description of Project Approved for Collection at EYW and Use at Florida Keys Marathon Airport: Cargo apron rehabilitation.

Brief Description of Disapproved Project: Disadvantaged Business Enterprise (DBE) program implementation—EYW.

Determination: The FAA has determined that DBE programs are administrative elements of AIP grant approvals. Administrative elements of AIP grant approvals do not meet the project eligibility requirements of § 158.15.

Decision Date: April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331.

Public Agency: County of Milwaukee, Milwaukee, Wisconsin.

Application Number: 04–10–C–00–MKE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $11,000,601.

Earliest Charge Effective Date: March 1, 2017.

Estimated Charge Expiration Date: September 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at General Mitchell International Airport.

Brief Description of Projects Approved for Collection:

Phase 2 noise mitigation program.
E concourse aircraft ramp.

Brief Description of Projects Approved for Collection and Use:

Baggage claim area expansion—design.
Concourse D security.
Inline baggage security—design.

Decision Date: April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: Virgin Islands Port Authority, St. Thomas, Virgin Islands.

Application Number: 04–07–C–00–STT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $8,000,000.

Earliest Charge Effective Date: July 1, 2004.

Estimated Charge Expiration Date: April 1, 2008.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection:

Expansion, reconfiguration, and redesign of Federal Inspection/screening area.
Reconfiguration and redesign on passenger arrival area, baggage claim delivery area, and passenger pick-up area.
Reimbursement of funds used for terminal improvement.

Decision Date: April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331

AMENDMENTS TO PFC APPROVALS

Amendment no., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01–05–C–01–MSN, Madison, WI	03/29/04	$46,656,115	$79,902,856	03/01/14	10/01/23
01–04–I–01–PLB, Plattsburgh, NY	03/31/04	46,275	10,804	12/01/02	02/01/99
01–05–C–01–PLB, Plattsburgh, NY	03/31/04	56,500	56,500	04/01/05	04/01/05
01–05–C–02–PLB, Plattsburgh, NY	03/31/04	56,500	35,513	04/01/05	05/01/00
99–03–C–03–LLB, Lubbock, TX	04/01/04	4,529,514	4,622,222	09/01/02	09/01/02
02–04–C–01–LBB, Lubbock, TX	04/01/04	3,220,308	3,356,723	11/01/04	02/01/05
95–01–C–06–MKE, Milwaukee, WI	04/05/04	21,780,797	21,147,706	12/01/05	05/01/98
95–03–C–05–MKE, Milwaukee, WI	04/05/04	44,027,574	44,291,198	05/01/04	12/01/04
99–04–U–02–MKE, Milwaukee, WI	04/05/04	NA	NA	12/01/05	05/01/98
00–05–U–02–MKE, Milwaukee, WI	04/05/04	NA	NA	05/01/04	12/01/04
00–06–C–02–MKE, Milwaukee, WI	04/05/04	88,029,494	114,363,097	12/01/11	10/01/17
03–08–U–01–MKE, Milwaukee, WI	04/05/04	NA	NA	12/01/11	10/01/17
02–03–C–01–ATL, Atlanta, GA	04/09/04	1,269,547,063	1,359,194,382	10/01/13	10/01/13
03–05–U–01–ATL, Atlanta, GA	04/09/04	NA	NA	10/01/13	10/01/13
02–07–C–01–MKE, Milwaukee, WI	04/14/04	38,715,244	33,637,973	05/01/15	03/01/17
03–09–U–01–MKE, Milwaukee, WI	04/14/04	NA	NA	05/01/15	03/01/17
00–05–C–01–DBQ, Dubuque, IA	04/20/04	631,592	623,300	06/01/04	09/01/04
02–06–C–01–MSY, New Orleans, LA	04/23/04	148,375,724	171,876,315	01/01/12	05/01/11

Issued in Washington, DC on May 21, 2004.

JoAnn Horne,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 04–12180 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. PS–ANM100–2004–10029]

Process for Developing Instructions for Maintenance and Inspection of Fuel Tank Systems Required by SFAR88

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on the process used by holders of type certificates and supplemental type certificates to develop Airworthiness Limitations and instructions for maintenance and inspection of the fuel tank systems of certain transport category airplanes, as required by Special Federal Aviation Regulations Number 88 (SFAR 88).

DATES: Send your comments on or before June 28, 2004.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dennis Kammers, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Propulsion/ Mechanical Systems Branch, ANM–112, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2956; fax (425) 227–1149; e-mail: *dennis.kammers@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, ''Comments to Policy Statement No. PS–ANM100–2004–10029.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

This proposed policy provides guidance for complying with the requirements in Special Federal Aviation Regulation Number 88 (SFAR 88) for the preparation of instructions for maintenance and inspection of fuel tank systems in certain transport category airplanes. Paragraph 2(a) of SFAR 88 requires certain holders of Type Certificates (TCs) and Supplemental Type Certificates (STCs) of large transport airplanes to conduct a safety review of the fuel tank systems. The purpose of the safety review is to identify design features that may result in development of ignition sources in the fuel tank systems.

Corrective actions, such as design changes, operational procedures, or maintenance may be necessary to eliminate those ignition sources.

The proposed policy relates to paragraphs 2(b) and 2(c)(2) of SFAR 88 which require that, based upon the safety review, the TC and STC holders develop Airworthiness Limitations and instructions for maintenance and inspection of the fuel tank systems in order to maintain those design features which preclude the existence of the development of an ignition source.

The FAA intends that operators use those instructions to propose changes in their maintenance programs in order to properly maintain the ignition-prevention features of the fuel tank system for the operational life of the airplane.

Issued in Renton, Washington, on May 24, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12067 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–17687

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company (UP) seeks approval of the proposed modification of the traffic control system on the two main tracks, between milepost 288.4 and milepost 288.9, near Bald Knob, Arkansas, on the Hoxie Subdivision, North Little Rock Area. The proposed changes consist of the removal of three intermediate leaving signals, northbound signal No. 2884 at milepost 288.4, and southbound signals No. 288R and No. 288L at milepost 288.7.

The reasons given for the proposed changes are that the signals are very close to controlled signals and confusing to new engineers running trains through the area, and the signals are no longer needed for train operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are

available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on May 19, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–12132 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2004–17957]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 27, 2004.

FOR FURTHER INFORMATION CONTACT: William Kurfehs, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–2318; fax: (202) 493–2180; or e-mail: *bill.kurfehs@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application and Reporting Requirements for Participation in the Maritime Security Program.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0525.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Maritime Security Act of 2003 provides for the enrollment of qualified vessels in the Maritime Security Program Fleet. Applications and amendments are used to select vessels for the fleet. Periodic reporting is used to monitor adherence of contractors to program parameters.

Need and Use of the Information: The collected information is necessary for MARAD to determine if selected vessels are qualified to participate in the Maritime Security Program.

Description of Respondents: Respondents are vessel operators.

Annual Responses: 198.5.

Annual Burden: 224 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority: 49 CFR 1.66.)

By Order of the Maritime Administrator.

Dated: May 24, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–12109 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2004–17956]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OSPREY II.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17956 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before June 28, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–17956. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will

be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *OSPREY II is:*

Intended Use: ''Charter fishing.''

Geographic Region: ''Coast of Maine to Brownsville, Texas and the Caribbean Islands.''

Dated: May 24, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–12108 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17902; Notice 1]

Volkswagen of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (Volkswagen) has determined that certain vehicles that were produced by Volkswagen AG and AUDI AG in 2004 do not comply with S4.2.2(a) of 49 CFR 571.114, Federal Motor Vehicle Safety Standard (FMVSS) No. 114, ''Theft protection.'' Volkswagen 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), Volkswagen 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 Volkswagen'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 47,962 model year 2004 vehicles are affected including approximately 37,663 Touareg, approximately 2,268 Phaeton and approximately 8,031 Audi A8L vehicles. S4.2.2(a) of FMVSS No. 114 requires that

> * * * provided that steering is prevented upon the key's removal, each vehicle * * * [which has an automatic transmission with a ''park'' position] may permit key removal when electrical failure of this [key-locking] system * * * occurs or may have a device which, when activated, permits key removal.

In the affected vehicles, the steering does not lock when the key is removed using the override system provided to permit key removal when the transmission is not in the ''park'' position.

Volkswagen believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Volkswagen states the following in its petition:

> The ignition key/transmission interlock requirements of S4.2 were enacted in Docket 1–21, Notice 9 published May 30, 1990. In that amendment, there was no provision for an override to permit key removal if the transmission was not in the PARK position. In response to petitions for reconsideration and comments to the original NPRM by Toyota, Nissan, Subaru and the Rover Group, NHTSA published Docket 1–21, Notice 10 on March 26, 1991 to revise S4.2 by adding S4.2.1 and S4.2.2 which permitted an override device located behind a non-transparent cover that must be removed with the use of a tool. The activation of the override could permit removal of the key even though the transmission is not in PARK. An override could also permit moving the transmission out of the PARK position after removal of the key. The condition required for the operation of the override device in each case was that the steering would be prevented when the key is removed.
>
> Toyota and Honda filed petitions for reconsideration to the March 1991 Final Rule amendment and these were responded to in Docket 1–21, Notice 11 on January 17, 1992. In Notice 11, NHTSA amended S4.2.2(a) to clarify that key removal is permitted even though the transmission was not in PARK without the activation of the override device in the event of vehicle electrical failure. However, removal of the key with the transmission not in PARK under conditions when the vehicle has normal electric power would only be permitted with the use of the override device. The condition for permitting key removal under any situation when the transmission was not in PARK was that the steering would be prevented when the key is removed.
>
> The provision that the steering must be locked when the key is removed was discussed in both Notice 10 (56 FR 12467, March 20, 1991) and in Notice 11 (57 FR 2040, January 17, 1992) and the stated intent was ''to ensure that Standard No. 114's theft protection aspects are not jeopardized.'' There is no indication that the requirement for the steering to be locked was based on any need to prevent personal injury or property damage.

Volkswagen states that it believes the noncompliance is inconsequential to motor vehicle safety because the presence or absence of a steering lock when the vehicle is without power and the key removed has no significance to motor vehicle safety. Volkswagen explains:

> In the Volkswagen and Audi car lines for which this petition is submitted, the ability to remove the key with the override system is the priority security and safety feature (to the extent that it prevents a stolen vehicle from being driven) because the vehicles are equipped with an electronic immobilizer which prevents starting of the vehicle unless the electronically coded key provided for that vehicle is used. The code to start the engine and activate the fuel and ignition system is embedded in the engine control module and therefore cannot be bypassed or defeated. If the key cannot be removed in the event of vehicle power failure, the owner will not be able to lock the vehicle and the car can be started and driven by anyone who can get it repaired, which is as simple as a jump start.

Volkswagen asserts that there is no risk to motor vehicle safety from using the override device to remove the key when the transmission is not in ''park'' when there is no vehicle power failure because this would occur only in a repair shop or under supervised conditions when the vehicle must be moved but it is desired to remove the key for security reasons. Volkswagen states that in this case, the electronic immobilizer provides anti-theft protection and the steering lock is not significant.

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 28, 2004.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: May 24, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–12134 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34507]

The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over NSR's Kansas City District between NSR milepost S241.9 at CA Junction, MO, and NSR milepost S250.6 at Maxwell, MO, a distance of approximately 8.7 miles.

The transaction is scheduled to be consummated on May 30, 2004, and the temporary trackage rights will expire on June 1, 2004. The purpose of the temporary rights is to facilitate maintenance work on BNSF lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and, in accordance with the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Transportation Union—General Committee of Adjustment (GO–386)* v. *Surface Transportation Board*, 363 F.3d 465 (D.C. Cir. 2004), any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it 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. 34507, 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 Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 24, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–12125 Filed 5–27–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 412X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Ponca City, Kay County, OK

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F–*Exempt Abandonments* to abandon a 4.14-mile line of railroad between BNSF milepost 138.00 and milepost 142.14 in Ponca City, Kay County, OK. The line traverses United States Postal Service ZIP Code 74601.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 29, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 7, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 17, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 4, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 28, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–11889 Filed 5–27–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 413X]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Washington County, MN

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.99-mile line of railroad between BNSF milepost 11.81 and milepost 12.80 in Stillwater, Washington County, MN. The line traverses United States Postal Service Zip Code 55082.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been meet.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 29, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 7, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 17, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[3]

A copy of any petition filed with the Board should be sent to the applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 2, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1102.2(f)(25).

[3] Each trail use request must be accompanied by the filing fee, which currently is set at $200. *See* 49 CFR 1002.2(f)(27).

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 28, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–12024 Filed 5–27–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 648X)]

CSX Transportation, Inc.—Abandonment Exemption—in Muhlenberg and Ohio Counties, KY

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a line of railroad in its Southern Region, Nashville Division, Henderson Subdivision, between Moorman (milepost 0HE 118.8) and Wilson Station (milepost 0HE 114.2), a distance of 4.6 miles, in Muhlenberg and Ohio Counties, KY. The line traverses United States Postal Service Zip Codes 42330 and 42328.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—*

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 29, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 7, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 17, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Esq., Ball Janik, LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 4, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 28, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–11890 Filed 5–27–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 21, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 28, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1068.

Regulation Project Number: INTL–362–88 Final.

Type of Review: Extension.

Title: Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation.

Description: The election and recordkeeping requirements are necessary to exclude certain high-taxed or active business income from subpart F income or to include certain income in the appropriate category of subpart F income. The recordkeeping and election procedures allow the U.S. shareholders and the IRS to know the amount of the controlled foreign corporation's subpart F income.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 50,500.

Estimated Burden Hours Respondent/Recordkeeper: 1 hour.

Frequency of response: Other (one-time currency election).

Estimated Total Reporting/Recordkeeping Burden: 50,417 hours.

OMB Number: 1545–1443.

Regulation Project Number: PS–25–94 Final.

Type of Review: Extension.

Title: Requirements to Ensure Collection of Section 2050A Estate tax (TD 8686).

Description: The regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT's). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Respondents: Individuals or households.

Estimated Number of Respondents: 4,390.

Estimated Burden Hours Respondent: 1 hour, 23 minutes.

Estimated Total Reporting Burden: 6,070 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–12094 Filed 5–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C

Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Tuesday, June 22, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 22, 2004, from 11 a.m. e.d.t. to 12:30 p.m. e.d.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: various IRS issues.

Dated: May 24, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–12160 Filed 5–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, June 16, 2004, from 2 p.m. to 3 p.m. e.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. Notification of intent to attend the meeting must be made with Audrey Y. Jenkins. For information or to confirm attendance, Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085. Written comments may be submitted prior to the meeting to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post your comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: May 21, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–12161 Filed 5–27–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 104

Friday, May 28, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 232, 239, 240, 242, 245 and 249

[Release Nos. 33–8419; 34–49644; File No. S7–21–04]

RIN 3235–AF74

Asset-Backed Securities

Correction

In proposed rule document 04–10467 beginning on page 26650 in the issue of Thursday, May 13, 2004, make the following corrections:

1. On page 26661, in the table ''Proposed Disclosure for Form S-1 for Registered ABS Offerings'':

a. Under Item 2. in the second column, under the heading Required if applicable add a bullet.

b. Under Item 11(b), in the second column, under the heading Required if applicable remove the bullet.

2. On page 26689, in the first column under the footnotes, in the 11th line from the bottom, ''1'' should read ''216''.

[FR Doc. C4–10467 Filed 5–27–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
May 28, 2004

Part II

Department of Education

Office of Safe and Drug-Free Schools; Grants to States To Improve Management of Drug and Violence Prevention Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notice

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants to States To Improve Management of Drug and Violence Prevention Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184R.

Dates: Applications Available: May 28, 2004.

Deadline for Transmittal of Applications: July 15, 2004.

Deadline for Intergovernmental Review: August 16, 2004.

Eligible Applicants: State educational agencies or other State agencies administering the Safe and Drug-Free Schools and Communities Act (SDFSCA) State Grants program.

Estimated Available Funds: $5,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $300,000—$500,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

I. Full Text of Announcement

Purpose of Program: The purpose of the Grants to States To Improve Management of Drug and Violence Prevention Programs is to award grants to State agencies to support development and testing of strategies for developing, expanding, or enhancing the capacity of State and local educational agencies, and other State agencies and community-based entities, to collect, analyze, and use data to improve the quality of drug and violence prevention programs administered in the States.

Background: This program is authorized by the No Child Left Behind Act of 2001 (20 U.S.C. 7131) under Subpart 2—National Programs (section 4121(a)(9)), which authorizes the Secretary to carry out other activities to prevent drugs and violence in the schools in addition to those specifically mentioned in the legislation. This program is designed to provide support to States to explore strategies that will address the challenges they face in collecting and using data to manage the implementation of drug and violence prevention programs, including:

(a) Lack of standardized data collection instruments and common definitions in use within the States;

(b) Lack of available expertise specific to collecting data about youth drug use and violence;

(c) Lack of resources to support high-quality data collection at the State and sub-State level; and

(d) Unfavorable community and media reaction to high rates of youth drug use and violence that discourages full and accurate reporting.

This project complements the U.S. Department of Education's (ED's) Performance-Based Data Management Initiative (PBDMI), which focuses on strategies to facilitate the transfer of information from State administrative records to ED to satisfy reporting requirements for programs administered by ED. This program seeks to provide support to help States and their localities improve the quality of information collected at the individual school and school district levels, and as a result, to improve the quantity and quality of data related to youth drug use and violence that are available to the State for submission via the PBDMI.

Priority: This notice includes one absolute priority and one competitive preference priority. We are establishing these priorities for the FY 2004 grant competition and any future awards made on the basis of the funding slate from this competition, in accordance with Section 437(d)(1) of the General Education Provisions Act (GEPA).

Absolute Priority: For this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: The development, enhancement, or expansion of the capacity of States and other entities that receive SDFSCA State Grants Program funds to collect, analyze, and use data to improve the management of drug and violence prevention programs. At a minimum, applicants must propose projects that will provide this expanded capacity to the State educational agency (SEA), the State agency administering the Governor's funding under the SDFSCA State Grants Program, and local educational agencies and community-based organizations that receive SDFSCA State Grants Program funding. Specifically, projects must be designed to:

(a) Include activities designed to expand the capacity of local educational agencies and community-based organizations that receive SDFSCA funds to use data to assess needs, establish performance measures, select appropriate interventions, monitor progress toward established performance measures, and inform the public about drug and violence prevention programs;

(b) Collect data that, at a minimum, meets the requirements of the Uniform Management Information and Reporting System (UMIRS) described in section 4112(c)(3) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA);

(c) Be consistent with the State's PBDMI strategy and produce data that can be transmitted to ED via its Education Data Exchange Network (EDEN) project; and

(d) Include validation and verification activities at the State and sub-State recipient levels designed to ensure the accuracy of data collected and reported.

Competitive Preference Priority: For this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on the extent to which the application meets this priority.

This priority is: The collection of incident data in a manner consistent with the definitions and protocols developed under the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, and other non-statutory requirements. Section 437(d)(1) of GEPA (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority. This is the first competition under the Grants to States to Improve Management of Drug and Violence Prevention Programs initiative, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priorities, selection criteria and other non-statutory requirements under section 437(d)(1) of GEPA. These priorities, selection criteria, and other non-statutory requirements will apply to this competition only.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: The Education Department regulations in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $300,000–$500,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) or other State agencies administering the SDFSCA State Grants program.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* In addition to meeting the absolute priority for this competition, a State (or the District of Columbia or Puerto Rico) may be awarded only a single grant for this program.

The application must demonstrate the commitment of both the SEA and the State agency receiving the Governor's portion of SDFSCA State Grants Program funding to the project. In order to meet this requirement, an applicant must include in its application a memorandum of understanding that includes, at a minimum, the signatures of the authorized representatives for the SEA and the State agency (or agencies) receiving the Governor's portion of SDFSCA State Grants Program funding for the State. The memorandum of understanding must outline project roles and responsibilities for the participants.

The application also must include evidence that the proposal has been reviewed by and has the approval of the State's chief information officer (CIO) and/or chief technology officer (CTO). The CIO and/or CTO may sign the required memorandum of understanding, or may provide a separate document including the required assurance.

Projects must propose to employ appropriate technology for the collection and analysis of data. Data may not be collected or reported manually.

IV. Application and Submission Information

1. *Address to Request Application Package:* Paper copies of the application package for this program are available from Maria Worthen, Office of Safe and Drug-Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6450. Telephone: 1 (202) 205–5632. Fax: (202) 260–7767, or by e-mail: *Maria.Worthen@ed.gov.*

The application package for this program is also available in PDF and WORD format from the Department's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339.

Individuals with disabilities may obtain a copy of the application package for this program in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: May 28, 2004.

Deadline for Transmittal of Applications: July 15, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 16, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications:

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Grants to States to Improve Management of Drug and Violence Prevention Programs competition—CFDA 84.184R is one of the programs included in the pilot project. If you are an applicant under Grants to States to Improve Management of Drug and Violence Prevention Programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We will continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- 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 the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424)

to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Grants to States to Improve Management of Drug and Violence Prevention Programs competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1 (888) 336–8930.

You may access the electronic grant application for the Grants to States to Improve Management of Drug and Violence Prevention Programs competition at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this program are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary has established the following performance measures for assessing the effectiveness of the Grants to States to Improve Management of Drug and Violence Prevention Programs:

a. The proportion of LEAs and Governor's fund recipients that are using data related to youth drug and violence to manage youth drug, alcohol, and violence prevention programs by:

• Incorporating this data in needs assessment processes;

• Using this data to develop performance measures for their SDFSC program funds;

• Considering this data in selecting school and, where applicable community-based interventions for implementation;

• Monitoring the success of interventions in reducing drug and alcohol use and violence, and in building stronger communities; and

• Sharing data with entity officials and the public.

b. The proportion of LEAs and Governor's Program fund recipients that have received training about collecting, analyzing and using data to manage and improve drug and violence prevention programs.

c. The proportion of LEAs and Governor's Program fund recipients that submit complete responses to data collections.

These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these outcomes in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their annual performance reports about progress toward these goals. Only baseline data and data at the conclusion of the project will be required for the first indicator.

VII. Agency Contact

For Further Information Contact: Maria Worthen, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6450. Telephone: (202) 205–5632, or by e-mail: *Maria.Worthen@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 24, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–12073 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
May 28, 2004

Part III

Department of Education

Office of Safe and Drug-Free Schools; Overview Information; Safe Schools/ Healthy Students; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notices

DEPARTMENT OF EDUCATION

RIN 1865–ZA02

Safe Schools/Healthy Students

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final priority, selection criteria, requirements, and definitions.

SUMMARY: We announce a priority, selection criteria, requirements, and definitions under the Safe Schools/Healthy Students program. We may use this priority, selection criteria, requirements, and definitions for competitions in fiscal year (FY) 2004 and later years. We take this action to focus Federal financial assistance on safe, disciplined, and drug-free learning environments and healthy childhood development. We intend the priority to support the implementation and enhancement of integrated, comprehensive, community-wide plans designed to create safe and drug-free schools and promote healthy childhood development.

DATES: *Effective Date:* This priority, selection criteria, requirements, and definitions are effective June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E347, Washington, DC 20202–6450. Telephone (202) 708–4674 or via Internet: *Karen.Dorsey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The Safe Schools/Healthy Students program (SS/HS) provides Federal financial assistance to school districts and communities to promote ongoing partnerships as a way to enhance and expand their existing activities relating to youth violence prevention and healthy child development. The establishment in this notice of a priority, selection criteria, requirements, and definitions is designed to provide prospective applicants with increased knowledge of and insight into the critical features of SS/HS and the qualities of successful SS/HS grantees and to define key terms specific to SS/HS.

The critical feature of SS/HS is the linking and integration of existing and new services and activities into a comprehensive approach to violence prevention and healthy child development. Key to this critical feature is recognizing that a comprehensive approach reflects an overall vision for the community, not the isolated objectives of a single activity, such as the reliance on security devices alone. Thus, the primary objective of an applicant's SS/HS proposal should be to present a thoughtful, well-coordinated plan that will unify and enhance existing programs and services to develop a systematic approach for implementing and sustaining those activities, curricula, programs, and services that prove to be effective.

Additionally, the SS/HS initiative draws on the best practices of education, justice, social service, and mental health systems to promote enhanced resources for prevention programs and prosocial services for youth. SS/HS grants provide a unique opportunity for local educational agencies (LEAs), in partnership with justice, social services, and mental health systems in their communities, to develop a continuum of activities and services that responds to gaps and weaknesses identified by needs assessments conducted in those communities. These distinctive features of SS/HS make appropriate the adoption of program-specific selection criteria, which are also included in this notice.

Finally, to respond to previous applicants' misunderstanding regarding eligibility, the maximum level of funding that can be requested, and requirements for key partners, we announce requirements that all applications must meet in order to be forwarded to peer review. To further support a prospective applicant's understanding of the requirements, this notice also defines seven important terms associated with SS/HS that are not defined in the program statute.

We published a notice of proposed priority, selection criteria, requirements, and definitions for this program in the **Federal Register** on Thursday, March 18, 2004 (69 FR 12841).

There are no differences between the notice of proposed priority, selection criteria, requirements, and definitions and this notice of final priority, selection criteria, requirements, and definitions.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, selection criteria, requirements, and definitions, three parties submitted comments on the proposed application and eligibility requirements. An analysis of the comments follows. None of the comments resulted in changes in the proposed application or eligibility requirements.

Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

Comment: One commenter recommended including local substance abuse prevention agencies either as a required SS/HS partner or by replacing the term ''local public mental health authority'' with the term ''local behavioral health authority(ies).'' In addition, the commenter recommended that definitions for the SS/HS initiative be changed accordingly.

Discussion: In some States and localities, local substance abuse prevention agencies are separate from mental health agencies. In other States and localities, the mental health and substance abuse authorities at the State and local level are combined. Because of the variation in these structures, we would have no way of knowing which applicants are in localities in which separate local agencies for public mental health and substance prevention exist and which would require an additional SS/HS partner if we adopted the change requested by the commenter. As a result, if we accepted the proposed change we would be unable to make an accurate determination regarding an applicant's eligibility.

In developing their SS/HS grant proposals, applicants are strongly encouraged to partner with a range of community organizations and entities that would enhance and support their comprehensive plan for violence prevention and healthy child promotion. Those LEAs situated in localities with a separate local substance abuse prevention agency could include this type of agency as a SS/HS partner.

Change: None.

Comment: Another commenter recommended that each LEA represented in a rural consortium be eligible for the maximum $1 million yearly award available to individual rural LEA applicants.

Discussion: LEAs are eligible to apply for SS/HS grants either individually or as a member of a consortium. A rural LEA and its partners should consider the project scope they have developed and the budget that the project scope will require in deciding whether to apply individually or as a member of a consortium. Nothing prevents individual LEAs from working cooperatively once they receive SS/HS awards.

Change: None.

Comment: A third commenter recommended that, because the proposed requirements limit eligibility to LEAs that have not received previous SS/HS grants or services, States with a single LEA be allowed to submit applications from individual schools.

Discussion: This commenter's concern could be addressed either by allowing applications from individual schools or by removing the restriction on an LEA receiving more than one SS/HS award. However, conference report language that supported the initial creation of the SS/HS initiative required that grants under the initiative be made to LEAs and, based on our experience in administering the initiative over the past several years, we believe that it is appropriate to continue to require that responsibility for administration of complex projects rest with an LEA, not an individual school.

While we understand that the variation in State governance structures for education may result in limiting the number of entities in a State that are eligible to apply for funding under this program, we believe that permitting individual schools or other educational entities that are not LEAs to apply for an SS/HS grant would be inconsistent with the initiative's intent to support comprehensive, community-wide change.

We have excluded recipients of SS/HS grants from receiving another grant under the program in order to provide as many LEAs as possible the opportunity to implement and enhance comprehensive community-wide strategies for creating safe and drug-free schools. The SS/HS initiative is designed to provide LEAs with a unique opportunity to design and implement partnerships with law enforcement, juvenile justice, and mental health partners that are designed to reshape the manner in which substance abuse and violence prevention services, as well as mental health services, are delivered to students.

Change: None.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, selection criteria, requirements, and definitions, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the applications meets the competitive priority (34 CFR 75.104(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority: This priority supports the projects of LEAs proposing to implement an integrated, comprehensive community-wide plan designed to create safe and drug-free schools and promote prosocial skills and healthy childhood development in youth. Plans must focus activities, curricula, programs, and services in a manner that responds to all of the following six elements—

- *Element One*—Safe school environment—**Note:** No more than 10 percent of the total budget for each year may be used to support costs associated with (1) security equipment and personnel, and (2) minor remodeling of school facilities to improve school safety;
- *Element Two*—Alcohol and other drugs and violence prevention and early intervention programs;
- *Element Three*—School and community mental health preventive and treatment intervention services;
- *Element Four*—Early childhood psychosocial and emotional development programs;
- *Element Five*—Supporting and connecting schools and communities; and
- *Element Six*—Safe school policies.

Selection Criteria: The selection criteria for this program are:

1. Community Assessment

(a) The extent to which specific gaps or weaknesses in services, infrastructure, opportunities, and/or resources have been identified and will be addressed by the proposed project and the nature and magnitude of those gaps and weaknesses are based on quantitative and qualitative data for the district, students, families and the community. An example of the kinds of problems that might be identified and addressed would be a high number of truant students, in relation to comparable jurisdictions, and a lack of truancy officers and programs.

(b) The extent to which existing services, infrastructure, opportunities and resources are described and integrated with the proposed project. An example citing existing services would be the number of after school programs available to students that would be improved by adding supplemental services and staff through the proposed project.

(c) The extent to which the applicant will serve the entire school district or the extent to which sufficient rationale is provided for selecting particular schools and/or areas and why a district-wide approach is not feasible or appropriate.

(d) The extent to which the target population is clearly identified and defined in terms of the number of students/families/staff to be served.

2. Goals, Objectives and Performance Indicators

(a) The extent to which the goals, objectives, and performance indicators for the project are related to data provided in the ''Community Assessment'' section.

(b) The extent to which the applicant includes at least one measurable and attainable performance indicator for each of the six elements in the priority and at least one performance indicator for the SS/HS partnership, for a total of at least seven performance indicators.

(c) The extent to which the goals, objectives, and performance indicators are reflected in proposed programs, curricula, and other activities.

(d) The extent to which the applicant includes baseline data and a source of data for the periodic measuring of progress of project-specific performance indicators and for required Government Performance and Results Act (GPRA) performance indicators.

3. Project Design

(a) The extent to which the project design builds upon community assessment data, and/or identified gaps or weaknesses in existing services, infrastructure, opportunities, and resources.

(b) The extent to which the applicant can demonstrate that programs, training, curriculum, and other activities selected for the project reflect current research and use evidence-based and effective practices and that they are responsive to the targeted population to be served, including meeting cultural and linguistic needs.

(c) The extent to which the proposed short- and long-term strategies will promote healthy child development and school environments that are safe, disciplined, and drug-free.

(d) The extent to which the proposed short- and long-term strategies allow for systematic development of infrastructure that builds organizational, community, and individual capacity to sustain outcomes beyond the life of the grant.

(e) The extent to which the project design addresses the six elements of the priority, integrating existing and new services into a comprehensive approach to violence prevention and healthy childhood development.

4. Partnership and Community Readiness

(a) The extent to which the applicant has demonstrated the existence of an active school-community partnership prior to planning and submitting its SS/HS application. An example of how to demonstrate the existing partnership would be to include a description of the history of the partnership, including the circumstances around its creation and accomplishments to date.

(b) The extent to which the applicant will engage multiple and diverse sectors of the community in its strategic planning process. Examples of possible community participants include but are not limited to nonprofit community groups, faith-based organizations, private schools, teachers, youth, parents, and supervisory and line staff of social service agencies.

(c) The extent to which the applicant's memorandum of agreement for SS/HS Partners includes: A mission statement for the SS/HS partnership; a delineation of the roles and responsibilities of each partner; a process for communicating and sharing resources; and other pertinent information to evaluate the partnership's likelihood of successfully implementing the project.

(d) The extent to which the applicant's memorandum of agreement for mental health services demonstrates the willingness of the public mental health authority to provide administrative oversight of mental health services. This agreement describes a process for securing mental health providers and procedures to be used for referral, treatment, and follow-up for children and adolescents with serious mental health problems. This agreement provides evidence that there will be integration, coordination, and resource sharing with mental health and social service providers by schools and other community-based programs.

5. Evaluation

(a) The extent to which the applicant describes an appropriate evaluation design—using both quantitative and qualitative methods, including: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what evaluation methods will be used and why; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; (7) how data and other information will be used for strategic planning, measuring progress, making programmatic adjustments, and keeping the proposed strategy focused on its overall objective of promoting healthy childhood development and preventing violence and alcohol and other drug abuse; and (8) how the applicant will use the information collected through the evaluation to support SS/HS GPRA indicators.

(b) The extent to which the individual or organization that has been selected or will be sought to serve as the local evaluator has adequate qualifications and experience to conduct the local evaluation.

(c) The extent to which the applicant allocates an appropriate and reasonable level of resources to local project evaluation.

Note: Consistent with funding restrictions established for the program, a minimum of 7 percent of the total budget must be designated for local evaluation activities.

6. Program Management

(a) The extent to which the roles and responsibilities of key staff, including the full-time project director, and partners are defined.

(b) The adequacy of the management plan to achieve the objectives of the proposed project on time, including clearly defined timelines with reasonable dates for implementing and accomplishing project tasks.

(c) The adequacy of procedures for communicating and sharing information among all partners, to ensure feedback and continuous improvement in the operation of the project.

7. Budget

(a) The extent to which the proposed budget and narrative correspond to the project design and provide adequate documentation and justification for how funds will be used and how costs were calculated.

(b) The extent to which the applicant demonstrates current fiscal control and accounting procedures to ensure prudent use, proper and timely disbursement, and accurate accounting of funds received under the grant.

Additional Selection Factors

The following two factors may be considered in selecting an application for an award: (1) Geographic distribution and diversity of activities addressed by the projects; and (2) equitable distribution of funds among urban, suburban and rural LEAs.

Application and Eligibility Requirements. Before we will submit an SS/HS application for peer review, the applicant must meet the following requirements:

(1) The LEA/applicant must not have received funds or services under the SS/HS initiative under any previous fiscal years.

(2) The applicant's request for funding must not exceed the maximum amount established for its defined urbanicity. The maximum request for SS/HS funds is $1 million for rural and Bureau of Indian Affairs (BIA) schools for a 12-month period; $2 million for suburban schools for a 12-month period; and $3 million for urban schools for a 12-month period. To determine urbanicity and the maximum amount they are eligible to apply for, all applicants except BIA schools must use the district locale code on the National Public School and School District Locator website and the definitions established in this notice for rural, suburban and urban to determine urbanicity. A BIA school's request must not exceed $1 million.

(3) The applicant must include in its application two memoranda of agreement demonstrating the commitment of the required SS/HS partners. Two agreements must be signed by the required partners (as described in paragraphs (a) and (b)) and dated no earlier than six months prior to the SS/HS application deadline. Applicants must also include information in the application that supports the selection of the identified local law enforcement and juvenile justice partner and describe how those partners' activities will support and be integrated in the SS/HS strategy. Applicants must contact their State Department of Mental Health to identify the relevant local public mental health authority. Mental health entities that have no legal authority in the administrative oversight of the delivery of mental health services are not acceptable as the sole mental health partner. Each SS/HS application must include the local public mental health authority (as defined elsewhere in this notice) as a partner. (The local public mental health authority is not required to provide mental health services to the target population but must provide administrative control or oversight of the delivery of mental health services.)

(a) The first of these two agreements is the Memorandum of Agreement for the SS/HS Partners. This agreement

must contain the signatures of the school superintendent and authorized representatives for the local public mental health authority and local law enforcement and juvenile justice agencies. This agreement must include the following information: A mission statement for the SS/HS partnership; the goals and objectives of the partnership; desired outcomes for the partnership; a description of how information will be shared among partners; and a description of the roles and responsibilities of each partner. Applicants submitting as a consortium of LEAs must demonstrate partnership with the relevant local law enforcement agency (or agencies), public mental health authority (or authorities) and juvenile justice agency (or agencies) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local law enforcement agency, public mental health authority, or juvenile justice agency has authority or jurisdiction for one or more of the participating LEAs in the consortium.

(b) The second of these two agreements is the Memorandum of Agreement for Mental Health Services. This agreement must contain the signatures of the school superintendent and the authorized representative of the local public mental health authority. The local public mental health authority must agree to provide administrative control and/or oversight of the delivery of mental health services. This agreement also must state procedures to be used for referral, treatment, and follow-up for children and adolescents with serious mental health problems. Applicants submitting as a consortium of LEAs must demonstrate partnership with the relevant public mental health authority (or authorities) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local public mental health authority has authority/jurisdiction for one or more of the participating LEAs in the consortium.

Funding Restrictions: No less than 7 percent of a grantee's budget for each year may be used to support costs associated with local evaluation activities. No more than 10% of the total budget for each year may be used to support costs associated with (1) security equipment and personnel, and (2) minor remodeling of school facilities to improve school safety.

Definitions: 1. Authorized representative—The term *authorized representative* means the official within an organization with the legal authority to give assurances, make commitments, enter into contracts, and execute such documents on behalf of the organization as may be required by the Department of Education (the Department), including certification that commitments made in grant proposals will be honored and that the applicant agrees to comply with the Department's regulations, guidelines, and policies.

2. Local law enforcement agency—The term *local law enforcement agency* means the agency (or agencies) that has law enforcement authority for the LEA. Examples of local law enforcement agencies include: Municipal, county, and State police; tribal police and councils; and sheriffs' departments.

3. Local public mental health authority—The term *local public mental health authority* means the entity legally constituted (directly or through contract with the State mental health authority) to provide administrative control or oversight of mental health services delivery within the community.

4. Local juvenile justice agency—The term *local juvenile justice agency* means an agency or entity at the local level that is officially recognized by State or local government to address juvenile justice system issues in the communities to be served by the grant. Examples of juvenile justice agencies include: Juvenile justice task forces; juvenile justice centers; juvenile or family courts; juvenile probation agencies; and juvenile corrections agencies.

5. Urban districts—The term *urban districts* means those LEAs with a designated locale code of Large Central City (1) or Mid-Size Central City (2) using the National Center for Education Statistics' National Public School and School District Locator (available online at *http://nces.ed.gov/ccd/districtsearch/*).

6. Suburban districts—The term *suburban districts* means those LEAs with a designated locale code of Urban Fringe of Large City (3) or Urban Fringe of Mid-Size City (4) using the National Center for Education Statistics' National Public School and School District Locator (available online at *http://nces.ed.gov/ccd/districtsearch/*).

7. Rural districts—The term *rural districts* means those LEAs with a designated locale code of Large Town (5), Small Town (6) or Rural, outside MSA (7), or Rural, inside MSA (8) using the National Center for Education Statistics' National Public School and School District Locator (available online at *http://nces.ed.gov/ccd/districtsearch/*).

Executive Order 12866

This notice of final priority, selection criteria, requirements, and definitions has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority, selection criteria, requirements, and definitions are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, selection criteria, requirements, and definitions, we have determined that the benefits of the final priority, selection criteria, requirements, and definitions justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits in the notice of proposed priority, selection criteria, requirements, and definitions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 98, 99, and 299.

Electronic Access to This Document

You may view this document, as well as other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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Register. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.184L Safe Schools/Healthy Students.)

Program Authority: Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7131); Public Health Service Act (42 U.S.C. 290aa); and Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5614(b)(4)(e) and 5781 *et seq.*).

Dated: May 24, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–12074 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Safe Schools/Healthy Students; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184L.

Dates: Applications Available: May 28, 2004.

Deadline for Transmittal of Applications: July 9, 2004.

Deadline for Intergovernmental Review: August 9, 2004.

Eligible Applicants: Local educational agencies (LEAs) or consortia of LEAs that have not received funds or services under the Safe Schools/Healthy Students (SS/HS) initiative during any previous fiscal year.

Estimated Available Funds: $42,000,000.

Estimated Range of Awards: Up to $1,000,000 per year for LEAs or consortia in rural areas and Bureau of Indian Affairs (BIA) schools; up to $2,000,000 per year for LEAs or consortia in suburban areas; and up to $3,000,000 per year for LEAs or consortia in urban areas.

Estimated Average Size of Awards: $2,000,000 per year.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides Federal financial assistance to LEAs to implement an integrated, comprehensive community-wide plan designed to create safe and drug-free schools and promote prosocial skills and healthy childhood development in youth.

Priority: This priority is from the notice of final priority, selection criteria, requirements, and definitions, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: The implementation of an integrated, comprehensive community-wide plan designed to create safe and drug-free schools and promote prosocial skills and healthy childhood development in youth. Plans must focus activities, curricula, programs, and services in a manner that responds to all of the following six elements:

- *Element One*—Safe school environment—**Note:** No more than 10 percent of the total budget for each year may be used to support costs associated with (1) security equipment and personnel, and (2) minor remodeling of school facilities to improve school safety;
- *Element Two*—Alcohol and other drugs and violence prevention and early intervention programs;
- *Element Three*—School and community mental health preventive and treatment intervention services;
- *Element Four*—Early childhood psychosocial and emotional development programs;
- *Element Five*—Supporting and connecting schools and communities; and
- *Element Six*—Safe school policies.

Program Authority: Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7131); Public Health Service Act (42 U.S.C. 290aa); and Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5614(b)(4)(e) and 5781 *et seq.*).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 98, 99, and 299. (b) The notice of final priority, selection criteria, requirements, and definitions, published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $42,000,000.

Estimated Range of Awards: Up to $1,000,000 per year for LEAs or consortia in rural areas and BIA schools; up to $2,000,000 per year for LEAs or consortia in suburban areas; and up to $3,000,000 per year for LEAs or consortia in urban areas.

Estimated Average Size of Awards: $2,000,000 per year.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs or consortia of LEAs that have not received funds or services under the SS/HS initiative during any previous fiscal year.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* The applicant must include in its application two memoranda of agreement demonstrating the commitment of the required SS/HS partners. Two agreements must be signed by the required partners (as described in paragraphs (a) and (b)) and dated no earlier than six months prior to the SS/HS application deadline. Applicants must also include information in the application that supports the selection of the identified local law enforcement and juvenile justice partner and describe how those partners' activities will support and be integrated in the SS/HS strategy. Applicants must contact their State Department of Mental Health to identify the relevant local public mental health authority. Mental health entities that have no legal authority in the administrative oversight of the delivery of mental health services are not acceptable as the sole mental health partner. Each SS/HS application must include the local public mental health authority as a partner. (The local public mental health authority is not required to provide mental health services to the target population but must provide administrative control or oversight of the delivery of mental health services.)

(a) The first of these two agreements is the Memorandum of Agreement for the SS/HS Partners. This agreement must contain the signatures of the school superintendent and authorized representatives for the local public mental health authority and local law enforcement and juvenile justice agencies. This agreement must include the following information: A mission statement for the SS/HS partnership; the goals and objectives of the partnership; desired outcomes for the partnership; a description of how information will be shared among partners; and a description of the roles and responsibilities of each partner. Applicants submitting as a consortium

of LEAs must demonstrate partnership with the relevant local law enforcement agency (or agencies), public mental health authority (or authorities) and juvenile justice agency (or agencies) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local law enforcement agency, public mental health authority, or juvenile justice agency has authority or jurisdiction for one or more of the participating LEAs in the consortium.

(b) The second of these two agreements is the Memorandum of Agreement for Mental Health Services. This agreement must contain the signatures of the school superintendent and the authorized representative of the local public mental health authority. The local public mental health authority must agree to provide administrative control and/or oversight of the delivery of mental health services. This agreement also must state procedures to be used for referral, treatment, and follow-up for children and adolescents with serious mental health problems. Applicants submitting as a consortium of LEAs must demonstrate partnership with the relevant public mental health authority (or authorities) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local public mental health authority has authority/jurisdiction for one or more of the participating LEAs in the consortium.

4. *Equitable Participation of Private Schools:* LEAs that receive an SS/HS grant are required to provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, the LEA must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate. Administrative direction and control over grant funds must remain with the grantee.

In order to ensure equitable participation of private school children, teachers and other educational personnel, the LEA must consult with private school officials on issues such as: How children's needs will be identified; what services will be offered; how and where the services will be provided; who will provide the services; how the services will be assessed and how the results of assessment will be used to improve those services; the amount of funds available for services; the size and scope of the services to be provided; how and when decisions about the delivery of services will be made; and the provision of contract services through potential third-party providers.

See Section 9501 of the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001.

5. *Maintenance of Effort:* An LEA may receive an SS/HS grant only if the State Educational Agency finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the state with respect to the provision of public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

IV. Application and Submission Information

1. *Address To Request Application Package:* Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E347, Washington, DC 20202–6450. Telephone: (202) 708–4674 or by e-mail: *Karen.Dorsey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. An application's narrative must be limited to the equivalent of no more than 40 pages and must adhere to the following standards:

- A ''page'' is 8.5″ by 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- All text in the application narrative must be double spaced (no more than three lines per vertical inch) including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures and graphs.
- Text must be presented in a 12-point Courier New font.
- All pages must be consecutively numbered using the style 1 of 40, 2 of 40, etc.

The page limit does not apply to the cover sheet, project abstract, budget forms and worksheets, or the required attachments.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: May 28, 2004.

Deadline for Transmittal of Applications: July 9, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 9, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* No less than 7 percent of a grantee's budget for each year may be used to support costs associated with local evaluation activities. No more than 10% of the total budget for each year may be used to support costs associated with (1) security equipment and personnel, and (2) minor remodeling of school facilities to improve school safety.

An applicant's request for funding must not exceed the maximum amount established for its defined urbanicity. The maximum amount for SS/HS funds is $3 million for urban schools for a 12-month period; $2 million for suburban schools for a 12-month period; and $1 million for rural LEAs and BIA schools for a 12-month period. To determine urbanicity and the maximum amount they are eligible to apply for, all applicants except BIA schools must use the district locale code on the National Public School and School District Locator website (available online at *www.nces.ed.gov/ccd/districtsearch)* and the definitions established in the notice of final priority, selection criteria, requirements, and definitions for the SS/HS program, published elsewhere in this issue of the **Federal Register**, for rural, suburban and urban to determine urbanicity. A BIA school's request must not exceed $1 million.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are: (1) Geographic distribution and diversity of activities addressed by the projects; and (2) equitable distribution of grants among urban, suburban, and rural local educational agencies.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* Semi-annually, you must submit a performance report, which includes reporting on expenditures, as specified by the Secretary in 34 CFR 75.720. At the end of your project, you must submit a final performance and local evaluation reports.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), we have developed four measures for evaluating the overall effectiveness of the SS/HS initiative: (1) SS/HS grant sites will experience a decrease in the number of violent incidences at schools during the 3-year grant period; (2) SS/HS grant sites will experience a decrease in substance use during the 3-year grant period; (3) SS/HS grant sites will improve school attendance during the 3-year grant period; and (4) SS/HS grant sites will increase mental health services to students and families during the 3-year grant period.

These measures constitute the Department's indicators of success for this initiative. Consequently, applicants for a grant under this program are advised to give careful consideration to these four measures in conceptualizing the design, implementation, and evaluation for their proposed project. If funded, applicants will be asked to collect and report data annually to document their success in addressing these performance measures.

VII. Agency Contact

For Further Information Contact: Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E347, Washington, DC 20202–6450. Telephone: (202) 708–4674 or by e-mail: *Karen.Dorsey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: May 24, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–12075 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
May 28, 2004

Part IV

Department of Health and Human Services

42 CFR Part 83

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

RIN 0920–AA07

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Final Rule

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This document describes how the Department of Health and Human Services (''HHS'') will consider designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA''). Under EEOICPA, and Executive Order 13179, the Secretary of HHS is authorized to make such designations, which take effect 180 days after Congress is notified unless Congress provides otherwise. An individual member (or the eligible survivors of a member) of a class of employees added to the Special Exposure Cohort would be entitled to compensation if the Department of Labor (''DOL'') finds that employee incurred a specified cancer and the claim meets other requirements established under EEOICPA.

DATES: *Effective Date:* This final rule is effective May 28, 2004.

Compliance Date: Affected parties are required to comply with the information collection requirements in § 82.9 effective May 28, 2004.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), 42 U.S.C. 7384–7385, established a compensation program to provide a lump sum payment of $150,000 and prospective medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy (''DOE'') and certain of its vendors, contractors and subcontractors. This legislation also provided for lump sum payments for certain survivors of these covered employees.

EEOICPA instructed the President to designate one or more Federal Agencies to carry out the compensation program. Pursuant to this statutory provision, on December 7, 2000, the President issued Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers''), which assigned primary responsibility for administering the compensation program to the Department of Labor (''DOL''). 65 FR 77487 (December 11, 2000). DOL published a final rule governing DOL's administration of EEOICPA on December 26, 2002 (67 FR 78874).

Executive Order 13179 directed HHS to perform several technical and policymaking roles in support of the DOL program:

(1) HHS was to develop procedures for considering petitions by classes of employees at DOE and Atomic Weapons Employer (''AWE'') facilities to be added to the Special Exposure Cohort established under EEOICPA. These procedures are the subject of this rule. HHS is also to apply these procedures in response to such petitions. Covered employees included in the Special Exposure Cohort who have a specified cancer, and eligible survivors of these employees, qualify for compensation under EEOICPA.

(2) HHS was to develop guidelines, by regulation, to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duty at a DOE facility or AWE facility. HHS published a final rule establishing these ''Probability of Causation'' guidelines on May 2, 2002 (67 FR 22296) under 42 CFR Part 81.

(3) HHS was also to develop methods, by regulation, to estimate radiation doses (''dose reconstruction'') for certain individuals with cancer applying for benefits under the DOL program. HHS published a final rule promulgating these methods under 42 CFR Part 82 on May 2, 2002 (67 FR 22314). HHS is applying these methods to conduct the program of dose reconstruction required by EEOICPA.

(4) Finally, HHS is to provide the Advisory Board on Radiation and Worker Health (''the Board'') with administrative and other necessary support services. The Board, a federal advisory committee whose members are appointed by the President, is advising HHS in implementing its roles under EEOICPA described here.

42 U.S.C. 7384p requires HHS to implement its responsibilities with the assistance of the National Institute for Occupational Safety and Health (NIOSH), an Institute of the Centers for Disease Control and Prevention, HHS.

B. What Is the Special Exposure Cohort?

The Special Exposure Cohort (''the Cohort'') is a category of employees defined under 42 U.S.C. 7384l(14). In this definition, Congress specified classes of employees to comprise the Cohort initially, including DOE employees, DOE contractor or subcontractor employees, who were (1) employed an aggregate of at least 250 work days before February 1, 1992 at a gaseous diffusion plant in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and who were monitored using dosimetry badges or worked in a job that had exposures comparable to a job that is or was monitored using dosimetry badges; or (2) employees of DOE or DOE contractors or subcontractors employed before January 1, 1974 on Amchitka Island, Alaska and exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests. As provided in 42 U.S.C. 7384l(9)(A), employees included in the Cohort who incur a specified cancer [1] qualify for compensation (*see* DOL regulations 20 CFR part 30 for details). Cancer claims submitted by these employees or their survivors do not require DOL to evaluate the probability that the cancer was caused by radiation doses incurred during the performance of duty for nuclear weapons programs of DOE, as is required for other cancer claims covered by EEOICPA.

C. Purpose of the Rule

EEOICPA authorized the President to designate additional classes of employees to be included in the Cohort, while providing Congress with the opportunity to review these decisions and expedite or reverse them. As noted previously, the President has delegated his authority in this matter to the Secretary of HHS. The purpose of this rule is to establish procedures by which the Secretary of HHS will determine whether to add to the Cohort new classes of employees from DOE and AWE facilities. The procedures are

[1] Specified cancers are a limited group of cancers that EEOICPA specifies are compensable under provisions governing compensation for members of the Cohort. Although the list of specified cancers is determined by statute, the list can also be found in this rule under § 83.5.

intended to ensure that petitions for additions to the Cohort are given uniform, fair, scientific consideration, that petitioners and interested parties are provided the opportunity for appropriate involvement in the process, and to comply with specific statutory requirements of EEOICPA. The procedures also address, within their relevant scope, the stated congressional purpose of the compensation program to provide timely compensation to covered employees or their survivors for covered illnesses incurred by such employees in the performance of duty.

D. Statutory Requirements for Designating Classes of Employees as Members of the Cohort

EEOICPA includes several requirements for these procedures. The Board shall provide advice to the President (delegated by Executive Order 13179 to the Secretary of HHS) concerning the designation of additional classes as members of the Cohort. The Board's advice is to be based on ''exposure assessments by radiation health professionals, information provided by the Department of Energy, and such other information as the Advisory Board considers appropriate.'' 42 U.S.C. 7384q. Section 7384q specifies that HHS obtain the advice of the Board ''after consideration of petitions by classes of employees * * * for such advice.'' This section also mandates two broad criteria to govern HHS decisions, which are to be made after receiving the advice of the Board. Members of a class of employees at a DOE facility or AWE facility may be treated as members of the Cohort for purposes of the compensation program if HHS ''determines that: (1) It is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.'' Finally, 42 U.S.C. 7384l(14)(C)(ii) requires the Secretary to submit a report to Congress for each class of employees the Secretary designates to be added to the Cohort. The report must define the class of employees covered by the designation and specify the criteria used to make the designation. This section requires that the designation take effect 180 days after the date on which HHS submits the report to Congress ''unless Congress otherwise provides.''

E. Relationship of Procedures to an Existing Rule Promulgated by HHS To Implement EEOICPA

These procedures complement the HHS final rule: ''Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Program Act of 2000'' promulgated by HHS on May 2, 2002 at 42 CFR Part 82 (67 FR 22314).

42 CFR Part 82 provides the methods by which NIOSH is conducting dose reconstructions to estimate the radiation doses incurred by individual covered employees who have incurred cancer. These estimates are required by EEOICPA for DOL to adjudicate a cancer claim for an employee who is not a member of the Cohort or whose claim is not covered by provisions of EEOICPA for compensating members of the Cohort. The methods to arrive at these estimates, however, will be directly considered by HHS in reviewing petitions to add classes of employees to the Cohort. In particular, HHS will consider these methods in determining for a petitioning class of employees, as required by EEOICPA, whether ''it is not feasible to estimate with sufficient accuracy the radiation dose that the class received.''

II. Summary of Public Comments

HHS published a first notice of proposed rulemaking (''NPRM'') specifying procedures for adding classes of employees to the Cohort on June 25, 2002 (67 FR 42962). Public and Board comments on this first NPRM led HHS to make substantial changes in the proposal, which resulted in the publication of a second NPRM on March 7, 2003 (68 FR 11294). HHS solicited public comments on this second NPRM from March 7, 2003 to May 6, 2003.[2] During this period, comments were also submitted by the Board.

HHS received comments on the second NPRM from 11 organizations and 19 individuals, including 14 Members of Congress. Organizations commenting included six national or local labor organizations representing DOE workers, the Health Physics Society, and four advocacy groups. A summary of these comments and HHS responses is provided below. These are organized by general topical area. The HHS responses in this section also serve to explain changes made to the proposed rule and to supplement explanations from both NPRMs concerning the intent of the final rule.

A. Feasibility of Dose Reconstructions: Timeliness, Cost, and Availability of Records

As discussed above, EEOICPA requires HHS to find that it is ''not feasible to estimate with sufficient accuracy the radiation dose that the class received'' as a condition for adding the class to the Cohort. The NPRM proposed the criterion that this condition would be met if NIOSH were not able to establish ''that it has access to sufficient information to estimate the maximum radiation dose that could have been incurred in plausible circumstances by any member of the class'' (68 FR 11308).

HHS received comments from several labor organizations, an advocacy group, and Members of Congress recommending that the rule establish additional criteria defining when dose reconstructions would not be feasible. Some commenters recommended distinguishing this requirement as separate and apart from the requirement for ''sufficient accuracy.'' The most common recommendation was for HHS to establish a time limit for completing dose reconstructions, after which the dose reconstruction would be determined to be not feasible. Commenters recommended time limits ranging from 180 days to 24 months.

HHS does not agree that a regulatory time limit on dose reconstructions would be appropriate in this rule, which establishes procedures for determining whether to add a class of employees to the Cohort. Some of the factors that could protract a dose reconstruction, such as a poorly defined employment history or work history, would be specific to the case of an individual employee, and would not be germane to a class of employees.

HHS does not believe a time limit on the duration of a dose reconstruction to be an appropriate addition to the dose reconstruction rule, either. Such a limit would eliminate the flexibility to address special circumstances and could effectively nullify the statutory requirements for dose reconstruction and the determination of probability of causation in their entirety by deeming all DOE and AWE employees to be members of classes of employees for whom dose reconstruction is not feasible.

In addition, a regulatory time limit could delay compensation for claimants whose dose reconstructions might exceed a regulatory deadline but would still be completed prior to the time at which a class of employees could be added to the Cohort. As this rule describes, Congress has 180 days to review any HHS decision to add a class to the Cohort, before such a decision could become effective.

One of the most important factors presently affecting the timeliness of dose reconstructions is the current

[2] HHS extended the public comment period from 30 to 60 days at the request of the Board and members of the public.

backlog of dose reconstructions, which is a result of the extensive development requirements of the dose reconstruction program. NIOSH began receiving cases requiring dose reconstructions in October of 2001, long before the dose reconstruction program could establish even minimal capacity for completing dose reconstructions. HHS completed final rules establishing the methods of dose reconstruction in May of 2002. NIOSH awarded a contract to build external capacity for conducting dose reconstructions in September of 2002.

NIOSH and its contractor for dose reconstructions are now employing more than 300 staff (including more than 100 health physicists) and are working to complete tasks necessary to eliminate the backlog. These tasks include the completion of ''site profiles,'' which summarize site-specific exposure conditions, dosimetry, and other relevant information. In parallel with this necessary developmental work, NIOSH is completing dose reconstructions at an increasing pace for cases involving sites for which NIOSH has already issued site profiles and for which site profiles are not needed. It took NIOSH 26 months to complete the first 1000 dose reconstructions. NIOSH completed the second 1000 in 14 weeks. This rate is continuing to improve.

An advocacy group and some Members of Congress also recommended HHS consider the cost of dose reconstructions as a criterion for feasibility, to avoid incurring ''prohibitive expense'' in conducting a dose reconstruction.

HHS has not included a cost criterion in the rule. The NIOSH dose reconstruction program is designed with procedures specifically intended to minimize the time and financial resources required for dose reconstructions. Individual dose reconstructions are presently costing an average of less than $10,000 each. A regulatory cost criterion would require HHS to incur unproductive expenses and might delay the consideration of petitions substantially, since HHS would have to estimate dose reconstruction costs related to each Cohort petition.

Some Members of Congress also recommended that HHS consider the deficiency or complete absence of records as a criterion for feasibility.

HHS included such provisions in the NPRM and in the final rule, as discussed in the following section discussing comments on ''sufficient accuracy.'' NIOSH internal procedures for evaluating petitions, available upon request from NIOSH (1–800–356–4674) or from the NIOSH Web page (*www.cdc.gov/niosh/ocas*), provide step-by-step practical information on how NIOSH will evaluate the availability of information needed to estimate the radiation doses of a class of employees with sufficient accuracy. These recommended internal procedures do not create any substantive rights on the behalf of petitioners. Comments may be provided at any time about these procedures to OCAS at ocas@cdc.gov. Any subsequent revision of the internal procedures will be posted on the NIOSH Web site at *www.cdc.gov/niosh/ocas*. If there are any substantial revisions to these procedures, NIOSH will publish a **Federal Register** Notice including an indication that there have been substantial revisions, a paragraph summarizing the changes, and that the revised procedures can be found on the NIOSH Web site at *www.cdc.gov/niosh/ocas*. Comments regarding these internal procedures or any revisions thereto are invited.

In addition, HHS has added a provision to section 83.13(c)(1)(i) of the rule, as part of the feasibility determination by NIOSH under this section, to require that NIOSH determine whether it has information regarding monitoring, source, source term, or process information from the site where the employees worked to serve as the basis for a dose reconstruction. EEOICPA requires that determinations of probability of causation for claimants under EEOICPA be based on the radiation dose received by the employee (or a group of employees performing similar work) at the facility where the employee(s) worked. 42 U.S.C. 7384n(c)(3)(A). Consequently, for NIOSH to determine that dose reconstruction is feasible, dose reconstruction must, as a starting point, be based on some information from the site where the employee worked. This basis requirement does not limit NIOSH to using only or primarily information from the site where the employee worked, but it requires the use of some information from the site.

HHS has also added a new § 83.13(b) which authorizes the Director of the Office of Compensation Analysis and Support (OCAS) within NIOSH to determine that records and/or information requested from DOE, an AWE, or another source to evaluate a petition is not, or will not be, available on a timely basis. Such a determination will be treated, for the purposes of the petition evaluation, as equivalent to a finding that the records and/or information requested are not available. This will facilitate the efforts of NIOSH to evaluate petitions within a reasonable amount of time in relation to the records and/or information required to evaluate the petition and any other relevant factors.

Some Members of Congress also recommended that the rule clarify that EEOICPA does not require a demonstration that no ''worst case estimate'' can be reached for inclusion in the Cohort.

HHS has clearly and completely specified the statutory requirements of EEOICPA relating to the addition of classes of employees to the Cohort, under section I(D) above. The rule itself provides procedures by which HHS will implement these statutory requirements. Related specifically to the comment, to add a class of employees to the Cohort, EEOICPA requires that HHS find that ''it is not feasible to estimate with sufficient accuracy the radiation dose that the class received;* * *;'' 42 U.S.C. 7384q(b). Subsection 83.13(c)(1) of this rule specifies clearly the approach HHS will use to evaluate feasibility. This approach, as it relates to the statutory requirement regarding feasibility, is discussed above, in sections B and C below, and in the second NPRM (68 FR 11296). The ability to estimate the maximum radiation dose received by members of a class is technically a critical distinction between circumstances in which it is feasible to estimate radiation doses through dose reconstruction and those in which it is not feasible to do so.

B. Feasibility of Dose Reconstructions: Relevance of Type of Cancer to Feasibility Determinations

The NPRM included provisions that would have allowed NIOSH to define a class of employees that it would recommend be added to the Cohort according to the specific cancers for which dose reconstruction is not feasible and hence demonstrate a reasonable likelihood of a dose that may have endangered the health of members of the class. Several commenters questioned the scientific proposition that it could be feasible to estimate radiation doses for individuals with certain cancers, but not feasible to estimate doses for individuals with other cancers. The statutory provisions of EEOICPA neither require nor prohibit HHS from establishing cancer-specific classes.

The Board, which specifically reviewed this issue, recognized that this situation ''may be scientifically and theoretically possible.'' Two theoretical examples of this situation, involving external radiation exposures (originating from outside of the body), were identified and considered during meetings of the Board and were not

contested by members of the Board (*see* Transcript of the Advisory Board on Radiation and Worker Health, March 7, 2003, page 17; Transcript of the Advisory Board on Radiation and Worker Health, March 28, 2003, pages 46–48).

On the other hand, some members of the Board did contest the proposition that it could be feasible to estimate radiation doses from internal exposures (originating from radioactive materials that are taken into the body) for certain cancer sites and not others. This discussion clarified that all tissues and organs could be irradiated to some degree in cases involving internal exposures (*see* Transcript of the Advisory Board on Radiation and Worker Health, March 7, pages 36–37; Transcript of the Advisory Board on Radiation and Worker Health, March 31, 2003, pages 42–66). As a result, a scientific finding concerning the feasibility of estimating doses in cases involving internal exposures would have to apply to all cancers. This reduces the practical applicability of a policy for establishing cancer-specific classes on the basis of the feasibility of dose reconstruction, since additions to the Cohort are likely to involve internal radiation exposures.

A second scientific issue related to the issue of adding cancer-specific classes to the Cohort but not related to the HHS proposal, is whether or not certain cancers should be excluded from a class because the radiation exposure of concern is unlikely to have caused those cancers. The Health Physics Society advocated such a policy, providing an example of situations in which one might reasonably conclude the probability of causation would be very low for certain cancers. An advocacy group and several labor organizations recommended against such a policy. HHS did not propose and has not established such a policy, which relates to health endangerment rather than the feasibility of dose reconstruction.

The most prevalent comment HHS received on this rule did not concern the scientific justification for establishing cancer-specific classes, but argued that such a policy conflicted with EEOICPA and with congressional intent. These commenters included the 14 Members of Congress, advocacy groups, and labor organizations. Although the courts generally give little weight to statements by individual legislators when determining congressional intent, many of these commenters referenced an October 12, 2000 statement by Senator Jeff Bingaman to the full Senate. In this statement, Senator Bingaman said that groups of workers added to the Cohort ''would be eligible for compensation for a fixed list of radiation related cancers,'' meaning the list of 22 ''specified cancers'' established under EEOICPA and listed in section 83.5(m) of this rule. S10377, *Congressional Record,* October 12, 2000.

Many commenters also expressed the view that it would be unfair and contrary to EEOICPA for HHS to exclude from classes of employees to be added to the Cohort employees who incur certain specified cancers, since all specified cancers are compensable for members of the classes included in the Cohort by statute. The relevant portion of the statutory provision of EEOICPA reads as follows: ''The term 'covered employee with cancer' means any of the following: [a]n individual with a specified cancer who is a member of the Special Exposure Cohort, * * *'' 42 U.S.C. 7384l(9)(A).

In addition, while the Board indicated that it might be scientifically and theoretically possible for the situations addressed by the NPRM to exist, the Board recommended against the establishment of cancer-specific classes, as discussed below, stating that it was concerned about ''providing some level of equity between the definition of new SEC classes and those already defined in the legislation.''

The provisions of EEOICPA that directly govern which classes of employees can be added to the Cohort are the feasibility and health endangerment provisions addressed under the ''statutory requirements'' section above. These provisions can be interpreted in different ways to either support or oppose the establishment of cancer-specific classes. They neither require nor prohibit HHS from establishing cancer-specific classes.

As discussed above, in support of cancer-specific classes, HHS has identified possible situations in which the feasibility of estimating doses would differ by type of cancer. In addition, the Health Physics Society and a member of the Board identified possible situations in which a determination of health endangerment might differ by type of cancer.

In opposition to including provisions for cancer-specific classes, one could interpret ''it is not feasible to estimate with sufficient accuracy the radiation dose that the class received'' to mean: it is not feasible to estimate with sufficient accuracy the radiation dose to any cancer site rather than the dose relevant to the cancer incurred by any particular employee. Similarly, health endangerment could be interpreted to mean an employee having been put at risk of certain types of cancers, regardless of whether the employee actually incurred one of the cancers for which the employee was at risk. Such interpretations would allow one to define a class without qualification, even when it would be feasible to estimate radiation doses for employees with all but one type of cancer, and even if most types of cancers were unlikely to have been caused by the radiation exposure of concern.

In light of the ambiguity of the statute, the limited practical applications of the option to establish cancer-specific classes, the nearly unanimous public opposition, and the opposition of the Board, HHS has omitted from the final rule the provisions in the NPRM that would have allowed the addition to the Cohort by HHS of cancer-specific classes of employees. Furthermore, HHS has revised section 83.13(c)(1) of the rule to state explicitly that NIOSH will make determinations of feasibility based on whether or not NIOSH is able to reconstruct doses for every type of cancer for which radiation doses are reconstructed.

The practical consequence of these changes is that HHS might designate classes of employees to be added to the Cohort under this rule despite the possibility that it might be feasible to estimate radiation doses with sufficient accuracy for some members of the class; specifically, that it might be feasible to estimate radiation doses with sufficient accuracy for a member of the class who incurs one of a subset cancer types for which there might be adequate dose-related information, as discussed above.

C. Accuracy of Dose Reconstructions

HHS received various comments and recommendations that relate to the determination as to whether it is feasible to estimate doses to members of a class of employees with sufficient accuracy.

The most frequent of these comments requested HHS provide additional detail, either in the rule or in guidelines, to define how NIOSH would establish, under § 83.13(c)(1), ''that it has access to sufficient information to estimate the maximum radiation dose that could have been incurred in plausible circumstances by any member of the class* * *'' HHS was asked to provide the methods by which maximum radiation doses would be estimated, and to define ''sufficient information.'' The Board requested that NIOSH issue guidelines to provide additional clarification concerning sufficient accuracy, after promulgation of this final rule.

As discussed above, NIOSH is issuing internal procedures concurrently with the promulgation of this rule that provide more detailed procedures for how it will evaluate petitions. While these procedures do not establish any substantive rights, they specify how NIOSH will identify available information and the general methods for determining whether such information will be sufficient to estimate maximum radiation doses for employees in the class, when such estimates are necessary. The internal procedures supplement the guidelines already provided in this final rule under section 83.13(c)(1). The internal procedures also provide limited generic information on how maximum radiation doses can be estimated when necessary. More specific detail outlining how available information would be used to conduct dose reconstructions would be provided within each NIOSH evaluation of a petition that finds that it is feasible to estimate radiation doses with sufficient accuracy for the class.

One individual commented that the rule puts excessive emphasis on estimating the maximum possible doses of radiation.

This emphasis was unintended. The proposed rule defined only the limits of dose reconstruction. The public should realize, however, that HHS may receive petitions for classes of employees for whom there is sufficient information to conduct dose reconstructions that provide more precise estimates than maximum doses, using, for example, personal or area monitoring records. For these petitions, methods for estimating maximum radiation doses would not be addressed in the NIOSH evaluation because they would not be relevant, since more precise dose reconstructions would be feasible. HHS has clarified the rule on this point, adding the following provision (identified below in italics) to section 83.13(c)(1):

> Radiation doses can be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose, for every type of cancer for which radiation doses are reconstructed, that could have been incurred in plausible circumstances by any member of the class, *or if NIOSH has established that it has access to sufficient information to estimate the radiation doses of members of the class more precisely than an estimate of the maximum radiation dose.*

HHS has also supplemented the guidelines previously included in the rule regarding the feasibility of estimating the radiation dose of a class of employees with sufficient accuracy. A new § 83.13(c)(1)(iii) specifies the following additional guidelines:

> In many circumstances, to establish a positive finding under paragraph (b)(1)(i) of this section would also require information describing the process through which the radiation exposures of concern may have occurred and the physical environment in which the exposures may have occurred.

One labor organization interpreted the NPRM as indicating that NIOSH would use analytic models, presumably to estimate maximum doses when necessary, at the expense of the timely completion of dose reconstructions.

The use of analytic models in such instances is efficient, not delaying. Dose reconstructions that rely more extensively on analytic exposure models can be completed far more quickly than dose reconstructions that require the collection and evaluation of extensive monitoring data, which may still involve the use of analytic exposure models as well.

An individual commented that this rule should define how NIOSH determines the reliability of dosimetry information for use in dose reconstructions. The commenter correctly noted that the accuracy of dosimetry results is affected by a variety of factors, some of which the commenter enumerated. The commenter also asserted that it was a ''fatal flaw'' of the NPRM to assume that maximum doses can be estimated 30 to 50 years after the fact.

The HHS dose reconstruction rule (42 CFR Part 82) and related dose reconstruction guidelines specify how doses are reconstructed and explain how NIOSH takes into account various factors that affect the interpretation of dosimetry information, particularly the limitations of dosimetry programs from the early decades of nuclear weapons production. The types of studies the commenter cited, that have evaluated the shortcomings of dosimetry programs, are used by NIOSH to interpret the records of such dosimetry programs.

The NPRM and this final rule, however, do not reflect an assumption that it will be feasible to estimate maximum doses or to more precisely estimate doses. The determination by NIOSH, the Board, and the Secretary of HHS as to whether dose reconstruction is feasible for a particular class of employees is a central element of this rule.

Related to this latter point, an advocacy group and a labor organization questioned whether petitioning is ''futile'' under the provisions of this rule concerning feasibility, because, in the view of the commenters, NIOSH ''raised the bar'' for evaluating whether doses can be estimated with sufficient accuracy from the first NPRM to the second NPRM, from when a dose reconstruction cannot be completed to when maximum doses (nor more precise doses) cannot be estimated.

The provisions of the second NPRM discussed in the comment are no more exclusive than those of the first NPRM, only more specific. The specificity was requested by the Board and sought by other public commenters as well.

There is, however, a substantial difference between the minimal requirements for submitting a petition, when such a petition is not based on NIOSH having already found that a claimant's dose reconstruction cannot be completed, and the requirements for adding a class of employees to the Cohort. Such petitions provide NIOSH with basic information necessary to begin the determination process, but NIOSH is likely to have more extensive access to information for dose reconstructions than petitioners. NIOSH will consider all information as necessary, not only information provided by the petitioner, to determine whether or not the radiation doses of the class of employees can be estimated with sufficient accuracy.

One labor organization commented that NIOSH had failed to address limitations of the NPRM. In explanation, the commenter asserted that the estimation of maximum doses would not be sufficient to estimate lifetime exposure and would not be valid in circumstances involving a mixture of radionuclides.

If NIOSH can estimate the maximum quantity of a radionuclide that could have been inhaled, ingested, or absorbed by an employee, then the maximum doses resulting from such internal exposure can be estimated for the entire period between exposure and the occurrence of cancer, as is necessary for NIOSH dose reconstructions.

With respect to mixtures of radionuclides, the critical issue is the extent of information about the mixture (e.g., quantities and identities). The involvement of multiple radionuclides is not inherently an obstacle to dose reconstruction. On the other hand, in situations involving exposure of a class of employees to a mixture of radionuclides of uncertain identity and quantity, NIOSH may not be able to estimate radiation doses and the class may be added to the Cohort, as provided for under this rule.

Two labor organizations questioned how NIOSH could estimate radiation doses for workers who move between buildings or facilities and who may not, themselves, have any knowledge of radiation sources.

If doses can be estimated for employees who worked steadily within a building or facility, then typically they could be estimated for employees who were in the building or facility episodically. A major difference in some such dose reconstructions, in cases in which the worker was not monitored at some or any of the locations, would be the need to allocate the worker's time among various locations. It is relatively straightforward to do so, using assumptions that give the benefit of the doubt to the worker when information concerning the duration of the worker's activities at different locations is insufficient.

An advocacy group, a labor organization, and some Members of Congress asserted that the provision of the NPRM requiring that NIOSH have sufficient information to be able to estimate maximum radiation doses, at a minimum, is incompatible with a provision of the dose reconstruction rule (42 CFR 82.10(k)(2)). Some of these commenters interpret the provision of the dose reconstruction rule as limiting the use of worst-case assumptions, which must be used in estimating maximum radiation doses, to non-compensable cancer claims (i.e., claims for which the probability of causation is below 50 percent). Furthermore, the commenters conclude that this perceived incompatibility could result in a situation in which NIOSH might find that it could not complete a dose reconstruction for a claimant and yet NIOSH could find, under this rule, that the claimants' doses can be estimated, preventing HHS from adding a class of employees including the claimant to the Cohort. For this reason, the commenters recommended that HHS amend the dose reconstruction rule to be compatible with this rule.

The dose reconstruction rule (42 CFR Part 82) does not require any revision with respect to this concern. It is not possible for NIOSH to determine that it cannot complete a dose reconstruction for a claimant under the dose reconstruction rule and simultaneously find the same dose reconstruction to be feasible under this rule (42 CFR Part 83).

The dose reconstruction rule very specifically restricted the condition on the use of worst-case assumptions to the case when they are used as an efficiency measure to limit time-consuming and resource-consuming additional research and analysis. This narrow restriction is stated in the dose reconstruction rule as follows (emphasis added):

> At any point during steps of dose reconstruction described [above], NIOSH may determine that sufficient research and analysis has been conducted to complete the dose reconstruction. Research and analysis will be determined sufficient if one of the following three conditions is met: * * * (2) Dose is determined using worst-case assumptions related to radiation exposure and intake, *to substitute for further research and analysis*; * * *
>
> * * * Worst-case assumptions will be employed *under condition 2 to limit further research and analysis* only for claims for which it is evident that further research and analysis will not produce a compensable level of radiation dose (a dose producing a probability of causation of 50% or greater), because using worst-case assumptions it can be determined that the employee could not have incurred a compensable level of radiation dose.'' 42 CFR Part 82.10(k)

In contrast, this Cohort rule implies the use of worst-case assumptions for dose reconstructions in essentially the opposite situation, to estimate maximum radiation doses in cases in which NIOSH lacks extensive information that could be used to conduct ''further research and analysis,'' rather than as an efficient substitute for such further research and analysis.

The dose reconstruction rule does not assert or imply any restriction in circumstances in which the total information available is limited. In fact, the rule generally anticipates such circumstances in describing the hierarchy of information that might be used in a dose reconstruction, depending on availability. In the introductory section of the rule, it describes the dose reconstruction practice of using assumptions to substitute for a lack of data:

> ''For dose reconstructions conducted in occupational illness compensation programs, this practice may include use of assumptions that represent worst-case conditions.'' 42 CFR Part 82.2(a).

Furthermore, the Cohort rule provides that whenever NIOSH finds under the dose reconstruction rule that it cannot complete a dose reconstruction, this finding will suffice, without exception or further consideration, to support a determination that it is not feasible to estimate the radiation doses of individual members of the class with sufficient accuracy. This was implicit in § 83.14 of the NPRM but has been made explicit, to eliminate any uncertainty in interpretation, with the following inserted text (in italics):

> (b) NIOSH will determine the health endangerment criteria for adding the class under paragraph (a)(1) of this section to the Cohort, using the procedures outlined under § 83.13. NIOSH will report to the Board the results of this determination, together with its finding under 42 CFR Part 82 that there was insufficient information to complete the dose reconstruction. *HHS will consider this finding under 42 CFR Part 82 sufficient, without further consideration, to determine that it is not feasible to estimate the levels of radiation doses of individual members of the class with sufficient accuracy.*

Two labor organizations asserted, in contrast with the comments discussed immediately above, that the NPRM and the dose reconstruction rule (42 CFR Part 82) were inappropriately linked through their implicit use of common criteria for determining the feasibility of dose reconstructions. EEOICPA required HHS to establish, by regulation, methods for arriving at reasonable estimates' of radiation doses incurred by individuals (42 U.S.C. 7384n(d)). As discussed above, EEOICPA requires HHS to determine that it is not ''feasible'' to estimate with ''sufficient accuracy'' the radiation dose that a class received, for HHS to add a class of employees to the Cohort (42 U.S.C. 7384q(b)(1)). The commenters believe the use of different terms in these two sections of EEOICPA (reasonable estimates of doses versus doses that are not feasible to estimate with sufficient accuracy) signals different intentions of Congress for determining the feasibility of dose reconstruction as it arises through the dose reconstruction program versus through a petition for adding a class to the Cohort. Accordingly, the commenters recommend that HHS establish different criteria for these two situations.

The statutory provisions concerning the development of dose reconstruction methods (42 U.S.C. 7384n(d)) are concerned with how dose reconstructions are to be done, not a determination as to whether or not they can be done. It is implicit, nonetheless, that these dose reconstructions must be ''feasible to estimate with sufficient accuracy.'' It appears to HHS that the use of this phrase under provisions for considering the addition of classes of employees to the Cohort, and the omission of this phrase under provisions concerning dose reconstruction, simply reflects the fact that these two separate provisions of EEOICPA address different but complementary circumstances.

An advocacy group and several labor organizations questioned whether or not an estimate of the maximum radiation dose produced by a dose reconstruction would be represented by a single value (point estimate) or by a distribution of values (that take uncertainty into account).

When NIOSH is limited to estimating maximum doses in a dose reconstruction based on source term and process information, the dose reconstruction is likely to rely substantially on one or more worst-case

assumptions that contribute to defining the level or levels of exposure and the characteristics of the exposure. It is unknown, however, how often such dose reconstructions would produce a point estimate of dose, versus a distribution of dose values that estimates dose. There are various circumstances that could result in the estimation of a distribution of dose values, such as when factors affecting the dose estimate have known and documented variability and/or uncertainties. NIOSH might use a distribution of values, for example, to characterize the particulate sizes of a radioactive material that has been ground or cut, when this factor had been studied and documented at comparable operations. In such a case, the distribution of values for particulate size would result in a distribution of dose values rather than a single, point estimate of dose.

One advocacy group and labor organization requested the rule or guidelines define ''plausible circumstances,'' asserting that use of this term was simply substituting for the term ''sufficient accuracy.'' In context, HHS uses the term as follows: ''Radiation doses can be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose that could have been incurred in *plausible circumstances* * * *'' (emphasis added). 42 CFR 83.13(c)(1)(i).

In this case, ''plausible circumstances'' is not substituting for ''sufficient accuracy'' as suggested, since the operative concept here is the ability to estimate the maximum radiation dose. The identification of plausible circumstances qualifies how such doses would be estimated. It means that NIOSH is not required to utilize unlikely, unreasonable, or illogical scenarios to estimate radiation doses. Furthermore, it is not reasonable to construct a ''litmus test'' for defining plausibility. It involves expert judgment, which will be applied by NIOSH and the Board in determining what are plausible circumstances consistent with the known information relevant to the evaluation of the petition. Dose reconstruction routinely uses expert judgment to address unknown and uncertain information. The important matter with respect to such judgments is that the NIOSH dose reconstruction program provides the benefit of the doubt to the claimant in identifying plausible scenarios, to ensure that dose reconstructions do not underestimate doses.

One advocacy group and one labor organization also recommended that NIOSH consider applying a statistical concept such as ''the size of the standard error'' in guidelines for defining sufficient accuracy. The general idea of this comment is that NIOSH would define quantitatively the degree to which the range and likelihood of all possible dose estimates supported by the facts could diverge from the central tendency of these estimates.

There is not a good scientific or logical basis for establishing a statistical measure of precision, which is not equivalent to accuracy, as a requirement for NIOSH dose reconstructions under EEOICPA. Any claimant for whom a less precise but more accurate estimate would support compensation might challenge such a requirement as arbitrary. For example, NIOSH might estimate that an employee incurred a radiation dose to the prostate of between 20 and 100 rem, with a central tendency of 60 rem. This dose distribution is not as precise as an estimate of between 50 and 70 rem, for example, but it could be more accurate to the degree that it appropriately accounts for the variability and uncertainty in the available data and hence better characterizes what we know and do not know about the level of dose received by the employee.

HHS interprets ''sufficient accuracy'' in practical terms as sufficiently accurate to assure the fair adjudication of claims. NIOSH dose reconstructions provide this assurance by using methods that build on the factual and scientific bases using two principal measures that are designed to overestimate every employee's dose.

First, as discussed above, the expert judgments (assumptions) used in NIOSH dose reconstructions give claimants the benefit of the doubt, when possible. When information is missing or questionable, the claimant is generally favored by NIOSH assuming the occurrence of the more harmful of plausible exposure scenarios.

Second, NIOSH accounts quantitatively for the factual and scientific uncertainties involved in each dose reconstruction and includes this measure of uncertainty in the probability of causation calculation performed by DOL. In practical terms, this favors the claimant because, pursuant to 42 U.S.C. 7384n(c)(3)(A), DOL calculates the probability of causation at the upper 99 percent credibility limit; in other words, any uncertainty in the dose used to adjudicate the claim will contribute to DOL overestimating the likelihood that the employee's cancer was caused by radiation.

These two measures taken together, claimant-favorable assumptions and the estimation of probability of causation at the upper 99 percent credibility limit, produce a doubly upper-bounded estimate of the employee's radiation dose. By these measures, whenever it is feasible for NIOSH to estimate radiation doses for a cancer claimant, NIOSH is almost certain to be overestimating the actual radiation doses.

D. Health Endangerment

In addition to the condition that HHS find that it is not feasible to estimate the radiation doses of a class of employees with sufficient accuracy, a second requirement of EEOICPA for adding a class to the Cohort is that HHS find that there is ''a reasonable likelihood that such radiation dose may have endangered the health of members of the class.'' Under section 83.13(b)(3) of the NPRM, HHS proposed a standard based on the duration of employment within the employment conditions under which radiation doses cannot be estimated. As a default, this standard would be 250 work days, the same standard required by EEOICPA for employees of the gaseous diffusion plants included in the Cohort by Congress. 42 U.S.C. 7384l(14)(A). In addition, for classes of employees that may have been exposed to radiation during discrete incidents that were likely to have involved exceptionally high level exposures, such as nuclear criticality incidents, HHS provided that an employee's presence with potential exposure during the discrete incident, rather than a quantified duration of potential exposure, would satisfy the health endangerment criterion.

HHS received relatively few comments concerning the health endangerment provisions of the rule and these were generally supportive. A few commenters recommended changes.

An advocacy group and a labor organization recommended that employees should be able to accumulate the 250 work days required to qualify as members of a class added to the Cohort on the basis of their employment at multiple facilities, if the class includes employment at the multiple facilities. The central concern behind this comment is that some nuclear weapons workers are likely to have been employed at more than one facility, potentially conducting similar work (such as construction or maintenance) and incurring similar exposures for which dose reconstruction might not be feasible. The commenters are aware that DOL qualifies employees of the gaseous

diffusion plants to be included in the Cohort by aggregating their employment across all three of the plants, and hence believe classes added to the Cohort should be treated similarly.

DOL is interpreting a section of EEOICPA that establishes a single, multi-facility class (42 U.S.C. 7384l(14)(A)), while HHS is interpreting a different section of EEOICPA (42 U.S.C. 7483q), which does not allow HHS to define a class as a group of employees from multiple facilities. However, HHS agrees with the principle of aggregating employment within separate classes of the Cohort for the purpose of determining health endangerment. There is no compelling health reason to distinguish between employment within one class of the Cohort and employment distributed among several classes of the Cohort, nor to distinguish whether such classes were employed at the same facility or at separate facilities. In any case, the employee would have accumulated 250 work days of employment involving exposure to radiation that either cannot be estimated by dose reconstruction under the provisions of this rule or for which Congress determined there was not a need for dose reconstruction when Congress included the various groups of employees in the Cohort.

Accordingly, HHS has added a provision to the rule to implement this principle of aggregating employment. Whenever HHS adds a class of employees to the Cohort for which the 250 work days requirement is applicable, HHS will define class eligibility such that DOL can aggregate the work days of an employee from among all other classes in the Cohort for which the employee meets all of the other requirements for membership, except for the work days requirement. For this purpose, section 83.13(c)(3)(ii) of the rule includes the following additional text (in italics):

(ii) For health endangerment not established on the basis of a discrete incident, as described under paragraph (b)(3)(i) of this section, NIOSH will specify a minimum duration of employment to satisfy the health endangerment criterion as having been employed for a number of work days aggregating at least 250 work days within the parameters established for the class *or in combination with work days within the parameters established for one or more other classes of employees in the Cohort.*

An advocacy group and two labor organizations recommended that the rule allow for the health endangerment test to be met in fewer than 250 work days for work operations lasting fewer than 250 days. The commenters indicated that certain short-term operations may have involved high level exposures. The comments also reflected the assumption that high level exposures could have occurred through the omission of radiation protection controls, versus their failure, only the latter of which was identified in the NPRM.

HHS has not established a separate criterion that would waive the 250 work days employment requirement for any short-term operation, since exceptionally high level exposures are not inherent to such operations. Section 83.13(c)(3)(i) of the HHS rule already provides for waiving the 250 work days employment requirement whenever classes of employees may have been exposed to radiation during discrete incidents likely to have involved exceptionally high level exposures, including any such incidents that may have occurred during projects of short duration. HHS has revised the text of this section to allow for the possibility that exceptionally high exposures could result from circumstances involving the omission of radiation protection controls, as well as their failure. With respect to this change, however, HHS advises potential petitioners that the omission of radiation protection controls, in and of itself, is not substantial evidence that exceptionally high level radiation exposures were likely. The provision of the rule allowing HHS to waive the 250 work days requirement is intended to address exposure scenarios distinctly more certain and severe than would be represented by exposure conditions generally at the gaseous diffusion plants, for which Congress established the precedent of setting an employment duration requirement at 250 work days.

An advocacy group recommended HHS incorporate into the rule a text excerpt of the NPRM preamble that explained that HHS will use the 250 work days employment requirement ''only when it lacks sufficient basis to establish a lower minimum standard.''

HHS has not incorporated this text into the rule for two reasons. First, the term ''only'' may be misleading. HHS has no basis to predict that the 250 work days employment requirement would be waived for the majority of classes of employees that may be added to the Cohort. Moreover, the text is not appropriate for the rule, since it could be interpreted to require HHS to demonstrate that it lacks sufficient basis to waive the 250 work days requirement, versus demonstrating that there is sufficient basis to waive the requirement. This would amount to requiring HHS to ''prove the negative,'' that it lacks certain information.

One labor organization commented that EEOICPA provides no basis for considering the effects of radiation in isolation when considering health endangerment.

EEOICPA specifically requires that HHS consider whether ''* * * such *radiation dose* may have endangered the health of members of the class'' (emphasis added) 42 U.S.C. 7384q(b)(2). This might allow HHS to take into account a synergistic or risk-potentiating relationship between a chemical and a radiation exposure, if such a relationship were known. Otherwise, EEOICPA does not authorize HHS to consider health risks other than exposure to radiation.

Two individuals commented that HHS should use epidemiological data to compare the cancer risks of classes of employees petitioning for addition to the Cohort with those of the groups included in the Cohort by statute. The commenters recommended that classes with cancer risks that are roughly comparable be added to the Cohort.

HHS cannot add classes to the Cohort on the basis of health endangerment alone. As discussed above, pursuant to 42 U.S.C. 7384q(b)(1), HHS must also find that dose reconstruction is not feasible. Moreover, as discussed in the second NPRM in response to this comment, there is no practical and scientifically defensible method for making such epidemiological comparisons for a variety of reasons, including limitations concerning timeliness, statistical power, and other matters (68 FR 11297).

One labor organization asserted that Congress intended for HHS to use the same criteria for considering whether to add classes of employees to the Cohort as were used by Congress itself to include groups in the Cohort by statute.

As discussed above, Congress specified in EEOICPA, 42 U.S.C. 7384q(b), the criteria that it intended HHS to use.

E. Eligibility To Petition

Section 83.7 of the NPRM specified parties that would be eligible to submit a petition on behalf of a class of employees. This included: ''(c) One or more individuals or entities authorized in writing by one or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors.''

HHS received conflicting comments concerning this provision. One labor organization recommended that HHS narrow the above provision specifically, and implied HHS would have to narrow another provision of § 83.7 that would

allow employees and survivors to petition (paragraph (a)), ''to recognize the exclusive right of a labor union to represent the collective interests of employees in represented bargaining units who might petition for inclusion in the SEC.'' The commenter asserted: ''Any NIOSH procedures inconsistent with this bedrock principle are incompatible with the National Labor Relations Act.'' The commenter further speculated that NIOSH would conserve resources by limiting the right to petition to the certified labor organization whenever the class includes members of an existing bargaining unit of a labor organization. The commenter explained that such a limitation ''will avoid the potential problem of several competing representatives filing overlapping or inconsistent petitions on behalf of common employees.''

Two other labor organizations (one being a local unit of the commenter discussed above) and three advocacy groups expressed unqualified support for the eligibility requirements proposed in the NPRM and specifically opposed the recommendations and rationale of the commenter discussed above. One of these commenters asserted that the National Labor Relations Act (NLRA) provision regarding the exclusive right of a labor union to represent collective interests of employees in union-represented bargaining units does not apply to petitions for Cohort status under the EEOICPA. Some members of this group of commenters further argued that the limitation proposed by the first commenter above would be unworkable given the large number of unions representing employees at a single site.

On its face, the NLRA, which in pertinent part at 29 U.S.C. 159(a) establishes the exclusive right of a labor union to represent employees in union-represented bargaining units for the purpose of ''collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment,'' does not apply to petitions for Cohort status under EEOICPA, as these do not involve ''collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.'' None of the items potentially addressed by collective bargaining are determined by HHS in considering a petition to add a class of employees to the Cohort.

HHS discussed the issue of potentially overlapping petitions, which concerned the first commenter above, in the first NPRM (67 FR 42966). This situation is unavoidable and HHS does not expect it to present major difficulties. HHS will consider concurrent petitions jointly, to the extent that they identify a class in common. With respect to the commenter's concern about potential conflicts between petitions, decisions by HHS on petitions will not govern decisions on subsequent petitions for the same class, or any part thereof, so long as substantial new information, germane to the criteria for adding a class to the Cohort, is provided by a subsequent petition.

For the reasons discussed above, HHS has retained in the rule the relevant provisions of § 83.7 from the NPRM, without change.

HHS revised § 83.7 to limit the number of petitioners that can submit a single petition to a maximum of three individuals and/or organizations. This limitation, which limits the number of petitioners but does not limit the number of members of a class of employees, is intended to facilitate the timely consideration of petitions by NIOSH, the Board, and the Secretary, since each petitioner for a petition has procedural rights under the rule that, if applicable to a large number of petitioners, could prolong the consideration of a petition substantially. HHS has also added a definition of the term ''petitioner'' under § 83.5(j) of the rule to reflect this change.

F. Petition Requirements

Section 83.9 of the NPRM specifies informational requirements that must be fulfilled by petitioners in order for HHS to consider the petition. An advocacy group and two labor organizations commented generally that they support the reduced requirements of this second NPRM, compared to the first NPRM. Commenters had several specific recommendations.

Subsection (b) requires claimants to petition when NIOSH has found that it cannot complete their dose reconstructions. The information to be provided by the petitioner in such cases is minimal, in effect simply notifying NIOSH formally that the claimant wishes to petition. Nonetheless, one labor organization recommended against this requirement, asserting that it is unnecessarily burdensome. The organization recommended that HHS automatically consider the addition of a class in these cases.

HHS interprets EEOICPA, 42 U.S.C. 7384q(a)(3), to require the submission of a petition to initiate consideration for adding a class of employees to the Cohort. As specified under the dose reconstruction rule (42 CFR 82.12), NIOSH will encourage and assist these claimants to file a petition and has minimized the requirements for their petitions.

Subsection (c)(1)(i) specifies that petitioners, other than the claimant-petitioners covered under subsection (b), must propose a definition of the class of employees for whom the petition would apply, including identifying, among other items: ''The DOE or AWE *facility* at which the class worked* * *'' (emphasis added). Three advocacy groups and three unions commented on this provision.

The commenters recommended that petitions be allowed to cover multiple facilities. Commenters explained that certain occupational groups, such as construction and maintenance workers, had work tasks that spanned separate sites, or had occupational histories that commonly involved work at more than one site, and that there may be similar deficiencies in radiation monitoring for these particular occupational groups across such sites. Furthermore, in response to the finding of HHS in the NPRM stating that EEOICPA does not allow for classes to be defined to encompass employees at more than one facility (68 FR 11298–11299), some of the commenters asserted that HHS is not properly interpreting the statute. Specifically, the commenters assert that it is proper in this case to interpret ''the singular [facility] to include the plural [facilities].''

The very first section of the United States Code, 1 U.S.C. 1, says: ''In determining the meaning of any act of Congress, *unless the context indicates otherwise*—words importing the singular include and apply to several persons, parties, or things * * *'' (emphasis added). In the case of the statutory language used by Congress in the section of EEOICPA describing the procedure for designating additional members of the Cohort (42 U.S.C. 7384q), the context indicates Congress did not define a class as a group of employees from multiple facilities. In particular, the context of the reference to a ''class of employees at *any* Department of Energy facility who likely were exposed to radiation at *that* facility'' in 42 U.S.C. 7384(q)(a)(1) cannot be interpreted as a class covering more than one facility (emphasis added). HHS therefore believes that the concept of considering and adding multi-facility classes was not anticipated nor provided for in EEOICPA.

As a result, HHS has not revised this section, nor the definition of the class under 83.5, to allow for classes spanning employment at multiple facilities. This limitation would not, however, prevent a petitioner from

submitting petitions separately for employees at each facility at which a group was employed, defining individual, facility-specific classes. Furthermore, changes in this rule eliminate the potential value of defining classes to include employment at multiple facilities. Under this rule (83.13(c)(3)(ii)), a claimant will be able to qualify as a member of a class added to the Cohort by HHS by combining the duration of his or her period of employment within the class with other periods of employment among other classes in the Cohort. Hence, for example, if classes of construction workers involved in certain operations were separately added to the Cohort from Hanford and from Los Alamos, then a construction worker who was employed for 100 work days in the specified operations at Hanford and for 150 work days in the specified operations at Los Alamos would meet a 250 work days employment requirement that might be established for such classes and he or she would qualify as a member of the Cohort.

Subsection 83.9(c)(2) specified various options available to petitioners to support a petitioner's belief that records and information available are inadequate to estimate the radiation doses incurred by members of the proposed class of employees with sufficient accuracy. Two advocacy groups and two labor organizations recommended changes to paragraph (iv) to allow petitioners to use in support the report of any government agency, rather than only reports by agencies that conduct scientific work. The commenters suggested any government agency should be considered a potentially credible source of information. The commenters also recommended against requiring that such reports specifically address the need for any dosimetry information identified in the report, with respect to dose reconstruction. The Board provided a similar recommendation (discussed in the following section).

HHS agrees that this provision should be clarified and improved, consistent with these comments. The paragraph now reads as follows:

(iv) A scientific or technical report, published or issued by an agency of the Executive branch of government, the General Accounting Office, the Nuclear Regulatory Commission, or the Defense Nuclear Facilities Safety Board, or published in a peer-reviewed journal, that identifies dosimetry and related information that are unavailable (due to either a lack of monitoring or the destruction or loss of records) for estimating the radiation doses of employees covered by the petition.

Subsection 83.9(c)(3) of the NPRM specified evidence that would be required only when a petition is based on an exposure incident (versus routine operations) and NIOSH is unable to obtain records or confirmation of the occurrence of such an incident from sources independent of the petitioner(s). One option specified for such evidence was confirmation by affidavit from two employees who witnessed the incident.

One labor organization commented that a total of two witnesses should be sufficient and that secondhand accounts should be sufficient when eyewitnesses are deceased. The Board made similar recommendations (discussed in the following section).

HHS has revised this subsection in response to the comments from the public and the Board. HHS has omitted the requirement for a specific number of witnesses, and has provided that the witnesses can be or include individuals who were informed by eyewitnesses, when the eyewitnesses are deceased, are incapable of providing an affidavit for reasons of poor health or impairment, or could not be located. HHS has also clarified that the provision of affidavits, in and of itself, would not constitute adequate evidence to verify the occurrence of an exposure incident. As with any other evidence used to evaluate petitions, NIOSH would have to consider the credibility and adequacy of the evidence provided in the affidavits.

One labor organization commented that the NPRM required petitioners to know the source terms (the identities and quantities of the radioactive materials) to which employees were exposed.

Neither the NPRM nor the final rule includes such a requirement.

HHS has added a new § 83.9(c)(5) necessary to provide that NIOSH would only be required to reconsider its initial evaluation or any subsequent evaluations concerning the addition of a particular class of employees to the Cohort (a class that has already been considered by NIOSH as the result of one or more previously submitted petitions) when a new petition for such a class provides substantially new information regarding the feasibility of estimating radiation doses with sufficient accuracy. This change will ensure that the Board and HHS can consider in a timely fashion the addition to the Cohort of as many classes as possible. The change preserves the ability of NIOSH, the Board, and HHS to reconsider the addition of a class when petitioners identify information not considered by NIOSH that might lead NIOSH and/or the Board to new findings and recommendations concerning a class previously considered.

G. Administrative Review of Decisions To Not Evaluate a Petition

Section 83.11 of the NPRM proposed procedures by which NIOSH would assist petitioners on petitions that NIOSH finds do not meet the relevant requirements for a petition. A petition that fails to meet such requirements despite such assistance would not be further considered by HHS. HHS solicited comments from the public as to whether HHS should offer the petitioner an administrative review of such final decisions.

Two advocacy groups and three labor organizations recommended the rule include the option of an administrative review. The commenters recommended that HHS specify the procedure for such reviews and that they be conducted independently. One commenter recommended that such reviews be conducted by NIOSH internally.

In response to the public comments, HHS has included an option for prospective petitioners to request an administrative review. Paragraphs (b) through (e) of section 83.11 have been revised and added for this purpose. The review would be conducted by three HHS personnel, appointed by the Director of NIOSH, who were not involved in the initial consideration of the petition. The rule provides for a simple and timely process, with minimal requirements imposed on the petitioner. When appropriate, NIOSH would notify a petitioner of the right to seek an administrative review and of the associated procedures.

H. Decisions by the Secretary

Section 83.16 of the NPRM described procedures by which the Secretary would decide the outcome of a petition.

An advocacy group, four labor organizations, and some Members of Congress requested additional detail or provided other comment on these procedures. The advocacy group recommended the Secretary delegate his authority to the Director of NIOSH and questioned the extent of the discretion of the Secretary and the ''weight'' that would be assigned to the advice of the Board. A labor organization recommended the rule limit the circumstances under which the Secretary may reject a recommendation of the Board to add a class to the Cohort, and should require explanation of such decisions. Another labor organization asserted that the rule does not specify the criteria by which the Secretary will make decisions. Several commenters

recommended the rule require the Secretary to make decisions within 21 days of receiving recommendations from NIOSH and the Board.

The advocacy group, a labor union, and some Members of Congress also sought additional information about the procedure for administrative review of proposed decisions. The advocacy group and a labor organization specifically questioned whether such reviews would include the opportunity for oral presentations by petitioners and experts, and the availability of the administrative record of the NIOSH evaluation(s).

HHS has specified procedures under § 83.16 in greater detail in response to these comments. The procedures now specify that the Director of NIOSH will propose decisions on behalf of HHS. The authority to issue final decisions, however, has not been delegated to the Director of NIOSH. As discussed in the preamble of the NPRM, the Secretary may consider such a delegation on the basis of experience.

The criteria for making proposed and final decisions were implicit in the NPRM but have been specified explicitly in the rule; these are the criteria to be applied by NIOSH in evaluating a petition under § 83.13(c), implementing the two criteria specified in EEOICPA (42 U.S.C. 7384q(b)(1) and (2)).

HHS has revised the procedures for issuing proposed decisions to clarify that NIOSH would issue multiple proposed decisions in response to a single petition, when NIOSH determines that the petition encompasses more than one class of employees. As defined under § 83.5(c), a class of employees means, for the purposes of this rule, a group of employees who work or worked at the same DOE facility or AWE facility, and for whom the availability of information and recorded data on radiation exposures is comparable with respect to the informational needs of dose reconstructions conducted under 42 CFR Part 82. Based upon NIOSH's evaluation of a petition, NIOSH may find that records are sufficient to conduct dose reconstructions for part of a proposed class, as defined by the petitioner, and insufficient to conduct dose reconstructions for another part of the proposed class. In such a case, NIOSH would define two or more separate classes of employees, distinguished by the difference in the sufficiency of the information available to conduct dose reconstructions.

Related to this clarification, HHS has also revised the procedures to authorize petitioners to contest only those proposed decisions that would deny the addition of a class to the Cohort and to contest a health endangerment determination under § 83.13(c)(3)(ii) for a decision that would add a class to the Cohort. This limitation will expedite the process of completing the consideration by HHS of classes that NIOSH has proposed adding to the Cohort by omitting a 30-day period, specified under the NPRM, during which HHS would have been required to await a challenge. It also will ensure that consideration by HHS of such classes would not have to further await, beyond the 30-day period, the outcome of a challenge in which a petitioner asserts that the proposed scope of the class is overly restrictive. This limitation will not prevent a petitioner from contesting any proposed decision or aspect of a proposed decision regarding his or her petition that would deny the addition to the Cohort of individuals covered by the petition or a resultant NIOSH proposed decision.

The section newly specifies the independence with which proposed decisions will be reviewed in response to challenges and provides clarification concerning the requirements of such challenges and the nature of such reviews. These will be records-based reviews conducted by a panel of three HHS personnel, appointed by the Secretary, rather than hearings involving witnesses and presided over by an administrative law judge. The reviews will not involve oral presentations or the introduction of new information that had not previously been presented or submitted to NIOSH or the Board prior to the Board completing its report of recommendations to the Secretary under § 83.15. Petitioners will have received all NIOSH evaluations concerning their petitions, and will have access to the administrative record for such evaluations, all publicly available information considered by the Board, as well as to the final report of the Board; petitioners will not have access to information protected by the Privacy Act and information classified for purposes of national security. Complete instructions for contesting proposed decisions will be provided to each petitioner.

The rule does not specify any particular weight that HHS will accord the advice of the Board in making proposed and final decisions. The Board recommendations are advisory. HHS would not prejudge such advice and will consider it according to its merits. Section 83.16 specifies the sources and scope of information that HHS will consider in making its decisions, and provides that HHS will explain the basis for the decisions.

The rule does not require that HHS make final decisions within 21 days or any specified period. Decisions will be made as expeditiously as possible, but HHS is providing petitioners 30 days to contest proposed decisions and such challenges would then have to be considered. The volume and scope of petitions, factors not controlled by HHS and impossible to predict, also might affect the speed of such decisions.

I. Cancelling or Modifying a Final Decision

One labor organization commented on the provisions under § 83.18 of the NPRM allowing the Secretary to cancel or modify a class that the Secretary had added to the Cohort. The commenter recommended such a decision by the Secretary be applied prospectively, for the adjudication of future claims; in other words, such a decision should not affect claimants who have already been compensated as a member of the Cohort, by potentially requiring the cessation of medical benefits or the return of the lump sum cash benefit, pending the results of a re-adjudication of the claim.

Since DOL makes final compensation eligibility determinations for claimants, DOL will determine the application of such decisions by HHS to claims that DOL has already decided and claimants who have already received compensation.

J. Definitions of Terms Used in the Rule

Section 83.5 provided definitions of terms used in the NPRM.

Three advocacy groups and four labor organizations commented on several of the definitions. The Board also commented on definitions.

The advocacy groups and two labor organizations recommended that the definition for a ''class of employees'' (§ 83.5(c)) in the NPRM be revised to allow for a class that would span multiple facilities. One advocacy group and one labor organization also recommended that this definition be revised to define a class in terms of information that is not available.

The multi-facility issue is fully discussed above, under the section addressing comments on petition requirements. HHS does not interpret EEOICPA to allow for petitioners to define multi-facility classes of employees. Hence, HHS has not changed the definition as recommended by the commenters. This limitation would not, however, prevent a petitioner from submitting petitions separately for employees at each facility at which a group was employed,

defining individual, facility-specific classes. Furthermore, as discussed above under the section on health endangerment, changes in this rule eliminate any potential value of defining classes to include employment at multiple facilities.

The terminology of the definition in the NPRM, in specifying that a class is defined in part by ''the availability of information,'' was appropriate and has not been changed in the final rule. The term ''availability'' covers the possibility that information is available or is not available, with respect to the informational needs of dose reconstructions conducted under 42 CFR Part 82. Both of these possibilities need to be covered, since HHS might define classes of employees for whom information is sufficient for the needs of dose reconstructions and other classes for whom information is insufficient, as provided under this part.

The NPRM did not include a definition of the term ''facility,'' which is used in the rule. Two advocacy groups and three labor organizations recommended the rule include a definition of facility, and that the definition be defined as broadly as possible. Some specific suggestions for wording were provided.

HHS has not included a definition of the term ''facility'' in the rule since ''atomic weapons employer facility'' and ''Department of Energy facility'' are already defined in EEOICPA (42 U.S.C. 7384l(5) and (12)). These statutory definitions are complex. As a necessary consequence, DOE facility or AWE facility definitions must be considered on a case-by-case basis. To provide guidance on the types of facilities that would fall within the statutory definitions, and in particular, whether the term ''facility'' is limited to a single building or can also include multiple buildings, HHS has included a footnote to § 83.9(c)(1)(i) in the final rule which provides:

> Depending on the factual circumstances present, a facility that meets the definition of an AWE facility or DOE facility covered under EEOICPA (42 U.S.C. 7384l(5) and (12)) could, among other possibilities, constitute a single building or structure, including the grounds upon which it is located, or a site encompassing numerous buildings or structures, including the grounds upon which it is located.

While a petition for a class of employees must be limited to one facility, a facility can constitute a site encompassing numerous buildings or structure, including the grounds upon which it is located. This has no effect, however, on the prospects for a class being added to the Cohort or the prospects for an individual employee being included as a member of a class added to the Cohort. These depend on the criteria specified in this rule, regardless of the scope of the petition. As discussed above, the latter also can depend on whether an employee meets a 250 work days employment criterion, when applicable, but § 83.13(c)(3)(ii) of the rule allows this criterion to be met through employment within the parameters of separate classes included in the Cohort.

HHS received two comments on the definition of ''specified cancers'' (§ 83.5(k)) provided in the NPRM. An advocacy group recommended the definition be amended to allow for other cancers specified by DOL. A labor organization recommended that the definition include rectal cancers, which have been determined by DOL, after consultation with the National Cancer Institute, to be a subset of cancer of the colon for the purposes of compensation for members of the Cohort.

The statutory definition of ''specified cancer'' can be found in EEOICPA at 42 U.S.C. 7384l(17). This definition cannot be changed by HHS; it can only be changed by Congress. The definition of ''specified cancer'' in the NPRM and in this final rule at § 83.5(m)(6) explains, however, that the specified cancers identified in the definition mean the physiological condition or conditions that are recognized by the National Cancer Institute, the scientific body with which DOL consults if there are questions regarding the proposed classification of a particular cancer.

HHS has added a definition of petitioner under § 83.5(j). The definition limits the number of petitioners that can submit a single petition to a maximum of three individuals and/or organizations. This limitation, which limits the number of petitioners but does not limit the number of members of a class of employees, is intended to facilitate the timely consideration of petitions by NIOSH, the Board, and the Secretary, since each petitioner for a petition has procedural rights under the rule that, if applicable to a large number of petitioners, could prolong the consideration of a petition substantially. HHS has also revised § 83.7 of the rule to reflect this change.

K. Miscellaneous Comments

The rule provides for petitions in two distinct circumstances. One circumstance is when NIOSH has attempted to conduct a dose reconstruction for a cancer claimant, under 42 CFR Part 82, and finds that the dose reconstruction cannot be completed, because there is insufficient information to estimate the radiation doses of the claimant with sufficient accuracy. The second circumstance includes all other possibilities. For example, a petition may be submitted representing a class of employees whose members have yet to file claims under EEOICPA, or even have yet to be diagnosed with cancer.

An advocacy group recommended that the rule explain these two circumstances that have been provided for under the rule. The commenter recommended specifically that the rule clarify that petitioners or potential class members are not required, as a prerequisite for petitioning, already to have incurred a cancer or to have filed a claim for a cancer.

HHS agrees with the comment and has added explanation to the overview of the rule under § 83.6 to summarize the two distinct circumstances for petitions.

A labor organization commented that the rule is unduly vague about the types of information used to evaluate petitions, citing § 83.14(a)(8) of the NPRM, which reads: ''Other sources.''

Section 83.13(a) provides a list of seven specific sources prior to the provision of concern to the commenter. It may not be possible for HHS to specify every possible source of information that might assist NIOSH in evaluating a petition. The purpose of specifying the limited list is to give the public a sense of the range of sources that might provide useful information. The purpose of including a non-specified ''other'' category is to clearly communicate that NIOSH will not be limited to using the sources it has identified in the rule.

L. Non-Regulatory Comment: Dose Reconstructions for Cohort Members With Non-Specified Cancers

Two advocacy groups questioned how NIOSH would handle dose reconstructions for individuals in the Cohort who have a cancer that is not one of the specified cancers or for individuals not included in the Cohort because they do not meet the health endangerment criterion of having been employed for 250 work days, when this criterion is applicable. In both situations, part or all of an employee's work experience may include potential radiation exposures that cannot be estimated. For the latter situation, one of the commenters suggested a scheme for assigning radiation doses to some cases.

Under current dose reconstruction procedures, NIOSH would estimate all of the radiation doses of such employees that can be estimated. Some of these employees may have sufficient radiation

doses that can be estimated to support compensation without taking into account any potential radiation exposures that cannot be estimated. NIOSH may be able to estimate all radiation doses of certain employees, depending on the type of cancer they incurred. NIOSH may also be able to estimate radiation doses for some current members of the Cohort, who were included in the Cohort by statute but have a cancer that is not one of the specified cancers for which an individual can be compensated as a member of the Cohort. However, NIOSH is not authorized under EEOICPA to administratively assign radiation doses to employees for whom radiation doses cannot be estimated using methods of dose reconstruction. For any claimant referred to NIOSH who is a member of the Cohort and has a cancer not defined as a ''specified cancer'' under EEOICPA (and so is not eligible for compensation under EEOICPA without a dose reconstruction), NIOSH will continue to attempt to complete a dose reconstruction, using whatever information is available about that member's entire work history.

M. Non-Regulatory Comment: Reporting Estimated Completion Dates for Petition Evaluations

One advocacy group and two labor organizations suggested that NIOSH report to Congress an estimated completion date for petitions whose evaluations by NIOSH will not be completed within 180 days.

An automatic reporting procedure would divert HHS resources from reviewing Cohort petitions and completing dose reconstructions. Moreover, a ''one-size-fits-all'' reporting procedure of the type proposed would be inappropriate, considering the wide variability that is likely in the scope and volume of petitions, and in the duration of Board evaluations and proceedings involving the petitioner(s) associated with each petition.

Two advocacy groups and two labor organizations recommended that NIOSH provide grants to fund health physicists and other experts to assist petitioners, as well as training workshops to address the informational requirements of a petition.

Petitioners should not need the assistance of health physicists to address the requirements for a petition under § 83.9. Most petitioners should find the petition instructions and petition form provided by NIOSH will be sufficient guidance. NIOSH, in coordination with the DOL/DOE resource centers, will assist petitioners on an individual basis as well. Section 83.11 of the rule commits NIOSH to providing further assistance to petitioners whose petitions have not met the basic requirements for evaluation.

N. Non-Regulatory Comment: Reporting on the Rate of Success of Petitions and Claimants

Two individual commenters recommended HHS report on the success rate of petitions for the addition of classes of employees to the Cohort. The commenters also recommended that DOL report on the success rates of cancer claimants seeking compensation under EEOICPA, providing individual rates by class of employees in the Cohort and a separate rate for claimants who are not members of the Cohort.

NIOSH provides extensive public information through its OCAS internet homepage (*www.cdc.gov/niosh/ocas*) on the status of its dose reconstruction activities and plans to be informative concerning petitions as well. The homepage will provide information on the status and the outcomes of petitions. The commenters should contact DOL if they wish to recommend specific types of reports on claims adjudication outcomes that might be useful to the public.

O. Non-Regulatory Comment: Recommendations To Add Specific Classes to the Cohort

Three labor organizations and one individual commented that various employee groups might or should qualify to become members of the Cohort.

NIOSH will send notices including this final rule and related information to all individuals or organizations who have indicated to NIOSH their intent to petition.

P. Non-Regulatory Comment: Completion of Dose Reconstructions for Mallinckrodt Chemical Company Employees

One individual reports that NIOSH has access to complete dosimetry data on employees of Mallinckrodt Chemical Company and that minimal dose reconstruction is required for these workers. On this basis, the commenter recommends that NIOSH be required to complete these dose reconstructions within 180 days.

The commenter assumes that if extensive radiation monitoring information is available, then dose reconstructions require ''minimal'' work. This is generally true for claims for which the monitoring data alone, prior to dose reconstruction, indicate high level exposures. In such cases, NIOSH would only conduct dose reconstruction to the extent sufficient to document dose levels that meet the threshold for compensation. In most settings, however, the majority of workers are unlikely to have records indicating high level radiation exposures. For these workers, NIOSH needs to carefully evaluate the adequacy of monitoring and monitoring records and to account for any deficiencies that might otherwise lead NIOSH to underestimate radiation doses.

The full process for dose reconstructions is outlined in 42 CFR Part 82 and described in greater detail in technical documents available from NIOSH. These procedures were designed to be as efficient as possible.

Q. Non-Regulatory Comment: Inclusion of Transcripts of Board Meetings in the Administrative Record of the Rulemaking

One advocacy group recommended that HHS include the transcripts of Board meetings for March 7, 14, and 28, 2003, and May 1, 2003 in the administrative record of this rulemaking. These Board meetings included discussions and decisions by the Board concerning its advice on this rulemaking, as well as public comment on issues considered by the Board.

HHS has included the transcripts of the referenced Board meetings in the NIOSH docket for this rule.

III. Recommendations of the Advisory Board on Radiation and Worker Health

HHS requested the Board to provide advice concerning these procedures for making additions to the Cohort. As discussed above, the Board has an integral role in the evaluation of petitions to add classes of employees to the Cohort.

The Board reviewed issues related to the Cohort during its meeting on May 2–3, 2002, and reviewed the initial NPRM, which was published on June 25, 2002, during its meetings on July 1–2, August 14–15, and August 22, 2002. After making substantial changes based on public comment and Board recommendations, NIOSH issued a second NPRM on March 7, 2003. The Board reviewed the second NPRM during meetings on March 7, 14, and 28, 2003, and May 1, 2003. The members also considered public comments on the two NPRMs provided during meetings of the Board and at four regional meetings held in July and August 2002. In addition, NIOSH staff members gave formal presentations on the two NPRMs and related issues during the Board meetings. The transcripts and minutes of these meetings are available to the

public and are included in the NIOSH docket for this rule.

All of the Board members participated in the review of the second NPRM and concurred in establishing the Board findings and recommendations, with the exception of an abstention by one Board member concerning one finding and recommendation. The Board provided several recommendations on substantial issues addressed in the NPRM, as well as recommendations for clarifying specific sections of the NPRM. The recommendations, which are available to the public from the NIOSH docket for this rule, are summarized below, together with responses by HHS to the recommendations.

A. Removing Cancer-Specific Provisions Concerning Determinations of the Feasibility of Dose Reconstruction

The Board recommended that HHS remove provisions of the NPRM in section 83.13 that would allow HHS to limit the employees included in a class to be added to the Cohort to those who incur specific types of cancers. The Board acknowledged that it may be possible in certain cases to determine that radiation doses are limited to certain specific sites in the body, which would provide a scientific basis for excluding employees who incur certain other types of cancer from certain classes that HHS might add to the Cohort. This finding notwithstanding, the Board was concerned that provisions accounting for such a possibility might conflict with the intent of Congress and, furthermore, the Board was concerned about providing ''some level of equity'' between the definition of classes added to the Cohort by HHS and those already defined by Congress in EEOICPA, which are not limited by type of cancer.

As discussed above in response to similar public comments, HHS has omitted all provisions for establishing cancer-specific classes from the final rule, in response to the recommendations of the Board and to public comments. HHS agrees with the Board that the perception of the public that such provisions would constitute unfair treatment under EEOICPA should be an overriding consideration for this decision.

B. Developing Guidelines Addressing the Feasibility of Estimating Doses With Sufficient Accuracy

The Board recommended that NIOSH develop guidelines, within a reasonable time period after promulgation of the final rule, to provide additional clarification on how NIOSH would determine whether it is feasible to estimate doses with sufficient accuracy, as specified under § 83.13(b) of the NPRM and § 83.13(c) of the rule. The Board recommended that it have the opportunity to review such guidelines. The Board also recommended that HHS make changes to the dose reconstruction rule (42 CFR Part 82), if any are needed, to resolve any potential conflict between these two rules that could leave claimants unable to obtain either a dose reconstruction or status as a member of the Cohort.

As discussed in response to public comments, NIOSH is issuing concurrently with this rule procedures to implement the guidelines specified under section 83.13 of this rule by which NIOSH will evaluate a petition, including the determination addressed in this recommendation by the Board. The Board will have the opportunity to provide recommendations to NIOSH on these procedures, although NIOSH will not delay its evaluation of petitions to obtain recommendations of the Board, or make revisions to the procedures. The rule provides under § 83.15 for the Board to consider each evaluation of a petition NIOSH completes and to request NIOSH to conduct additional analyses. Therefore, the Board will always have the opportunity to discuss with NIOSH any concerns the Board might have with the procedures and methods of a NIOSH evaluation.

As discussed in response to public comments, the dose reconstruction rule and this rule do not conflict with respect to determining the feasibility of dose reconstruction. No revision of the dose reconstruction rule is necessary for this purpose.

The consistency between the two rules does not, however, guarantee that all claimants will either receive a dose reconstruction or be included as members of the Cohort, as expressed by the Board. It is possible for a claimant to be excluded from the Cohort on the basis that the employee was not employed for a minimum of 250 work days within the parameters of a class of employees. This is specified under EEOICPA (42 U.S.C. 7384l(14)(A)), which provides statutory requirements defining the groups from the gaseous diffusion plants that Congress included in the Cohort, and under § 83.13(c)(3)(ii) of this rule, which addresses the statutory requirement for HHS to find that the health of members of a class may have been endangered, for such a class to be added to the Cohort.

C. Combining Employment Within Separate Cohort Classes for Meeting Health Endangerment Requirements

The Board recommended that employees be credited for days of employment within separate classes added to the Cohort, if necessary, to meet a 250 work days employment requirement that might be applicable to qualify as a member of a class added to the Cohort. As discussed above in response to similar public comments, HHS agrees with the Board and has added a provision to the rule for this purpose. Section 83.13(c)(3)(ii) provides that whenever HHS adds a class to the Cohort for which a 250 work days employment requirement is applicable, employees will be able to meet this requirement by combining their employment within the added class with employment within other classes in the Cohort.

D. Adding a Definition for the Term ''Facility''

The Board recommended HHS add to the rule a definition for the term ''facility'' to more clearly specify the limit of the scope of a petition. The Board further recommended that HHS define facility broadly to encompass entire nuclear weapons production sites, such as Los Alamos and Rocky Flats. The Board was particularly concerned that facility not be defined as limited to individual buildings, structures, etc., which the Board was concerned could cause difficulties in considering petitions that relate to operations spanning more than one building or other type of facility.

As discussed above in response to similar public comments, HHS has included in the final rule a footnote to § 83.9(c)(1)(i) that explains that an AWE facility or DOE facility covered under EEOICPA (42 U.S.C. 7384l(5) and (12)) could constitute a single building or structure, including the grounds upon which it is located, or a site encompassing numerous buildings or structures, including the grounds upon which it is located.

E. Evidence Confirming the Occurrence of Unrecorded Exposure Incidents

Under § 83.9(c)(3), the NPRM provided that for petitions based on exposure incidents, versus routine operations, petitioners would be required to provide evidence confirming the occurrence of the incident in cases that cannot be confirmed independently by NIOSH. One of the options for such evidence was the provision of affidavits from two employees who witnessed the incident.

The Board recommended that HHS clarify that affidavits from only two witnesses would be required, since the rule could be interpreted as requiring two witnesses in addition to the petitioner in a case in which the petitioner was also a witness. The Board further recommended that in cases in which eyewitnesses may no longer be living or might be difficult to locate, the rule should allow NIOSH to accept the accounts of other parties who were informed of the incident but were not witnesses to the incident.

As discussed above in response to similar public comments, HHS has revised this section of the rule to omit the requirement for a specific number of witnesses, to make the accommodation recommended by the Board with respect to situations in which eyewitnesses are not available, and to clarify that the provision of one or more affidavits would not, in and of itself, be sufficient to confirm the occurrence of an incident; NIOSH would have to consider the adequacy and credibility of the evidence provided in the affidavits.

F. Reviews of Findings That a Petition Does Not Satisfy the Requirements for a Petition

In the NPRM, HHS requested comment on whether or not the rule should provide an opportunity for petitioners to obtain a review of NIOSH findings that a petition does not meet the requirements specified under § 83.9. The first NPRM had provided for the Board to conduct such reviews, but the Board objected to such a role, which it viewed as an administrative function.

The Board was concerned about the lack of an administrative appeals process for such decisions and recommended HHS consider how such reviews could be conducted.

As discussed above in response to public comments, HHS has added provisions to § 83.11 to give petitioners the option of an administrative review of proposed NIOSH decisions.

G. Recommendations for Section 83.9

The Board recommended revisions to clarify the descriptions of two types of reports that a petitioner could use to support a petitioner's belief that records and information available are inadequate to estimate the radiation doses incurred by members of a class of employees. The first type is an unpublished report by a health physicist or expert in dose reconstruction that might be commissioned by petitioners. The second is a scientific report published in a peer reviewed journal or issued by a government agency.

HHS clarified these provisions consistently with the recommendations of the Board, with one exception. With respect to the first type of report described above, the revisions suggested by the Board would omit the requirement that the expert document his or her findings with respect to the limitations of records on radiation exposures. HHS has retained this requirement. HHS believes it is reasonable to require experts to support their assertions on factual matters with factual evidence.

The Board also recommended HHS consider whether placement of subsection (c)(3) is appropriate within this section, since the subsection addresses information requirements that only come into effect for certain petitions, in cases in which NIOSH requires additional information. The Board was concerned that this might be confusing to petitioners.

HHS has retained the placement of this subsection because it specifies informational requirements for a petition, even though they are conditional requirements. The introductory paragraph of the subsection has been revised to clarify that NIOSH would not require a petitioner to provide the information discussed in the subsection when the petition is submitted, but only upon request. In addition, petitioners will have information from NIOSH in addition to this rule, such as petition instructions and an optional petition form, to guide them through the petition process.

H. Recommendations for Section 83.13

The Board recommended a revision of § 83.13(b)(1)(iii) of the NPRM, which informed the public that NIOSH may often be able to estimate maximum radiation doses without personal dosimetry data and area monitoring data. The Board appeared to be concerned that readers might interpret the statement as being dismissive of the value of such information for dose reconstructions. HHS has revised this subsection (83.13(c)(1)(iv) of the final rule) to remedy this concern, as follows (in italics):

> (iv) In many circumstances, access to personal dosimetry data and area monitoring data is not necessary to estimate the maximum radiation doses that could have been incurred by any member of the class, *although radiation doses can be estimated more precisely with such data.*

I. Recommendations for the Preamble

The Board also made several editorial recommendations for clarifying the preamble of the NPRM. The preamble to this final rule, however, does not include any of the text addressed by the Board's recommendations.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the executive order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

This rule is being treated as a ''significant regulatory action'' within the meaning of the executive order because it meets the criterion of Section 3(f)(4) in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. It establishes practical procedures, grounded in current science, by which the Secretary of HHS can fairly consider petitions to add classes of employees to the Cohort. The financial cost to the federal government of responding to these petitions is likely to vary from thousands of dollars to as much as hundreds of thousands of dollars, depending on the availability of information and the scope of the petition.

The rule carefully explains the manner in which the procedures are consistent with the mandate of 42 U.S.C. 7384q and implements the detailed requirements of that section. The rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in section 3(f)(1) of the E.O. 12866. It has

a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR Parts 1 and 30. DOL has determined that its rule fulfills the requirements of E.O. 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (*see* 66 FR 28948, May 25, 2001). OMB has reviewed this Special Exposure Cohort rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The rule affects only DOL, DOE, HHS, and certain individuals covered by EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

C. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Rule?

The Paperwork Reduction Act is applicable to the data collection aspects of this rule. Under the Paperwork Reduction Act of 1995, a Federal agency shall not conduct or sponsor a collection of information from ten or more persons other than Federal employees unless the agency has submitted a Standard Form 83, Clearance Request, and Notice of Action, to the Director of the Office of Management and Budget (OMB), and the Director has approved the proposed collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

NIOSH has obtained approval from OMB to collect data as specified under this rule under OMB Control No. 0920–0639.

The rule requires classes of employees seeking to be added to the Special Exposure Cohort to submit written petitions for such consideration to NIOSH. HHS has specified the information that petitioners are required to include in their petitions. All petitioners will be required to include identifying and contact information. Other informational requirements will depend on the circumstances of the petition. Petitioners who are claimants for whom NIOSH has attempted to complete a dose reconstruction under 42 CFR Part 82 and has concluded that the dose reconstruction is not feasible are only required to acknowledge their intent to petition; no other information is required. All other petitioners will have to provide more extensive information that comprises the justification for their petition.

NIOSH will make available to petitioners a petition form and instructions to assist petitioners. As appropriate, NIOSH will also provide an authorization form that would be required by individuals who seek to authorize others to serve as petitioners. The authorization form is mandatory but the petition form is not mandatory.

The only cost to respondents is their time to complete and submit the petition.

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this rule prior to its taking effect. The report will state that the Department has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more. However, this rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR Parts 1 and 30. DOL has determined that its rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. HHS adverse decisions may be reviewed in United States District Courts pursuant to the Administrative Procedure Act. HHS has attempted to minimize that burden by providing petitioners an opportunity to seek administrative review of adverse decisions. HHS has provided a clear legal standard it will apply in considering petitions. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect on them.

J. Effective Date and Information Collection Approval

The Secretary has determined, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for this rule to be effective immediately to avoid undue hardship on and facilitate payment to eligible claimants.

The Office of Management and Budget (OMB) approved these information collection requirements on [****INSERT DATE****] and assigned control number [****INSERT NUMBER****].

List of Subjects in 42 CFR Part 83

Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

Text of the Rule

■ For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR Chapter I by adding Part 83 to read as follows:

PART 83—PROCEDURES FOR DESIGNATING CLASSES OF EMPLOYEES AS MEMBERS OF THE SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Subpart A—Introduction

Sec.

83.0 Background information on the procedures in this part.
83.1 What is the purpose of the procedures in this part?
83.2 How will DOL use the designations established under the procedures in this part?

Subpart B—Definitions

83.5 Definitions of terms used in the procedures in this part.

Subpart C—Procedures for Adding Classes of Employees to the Cohort

83.6 Overview of the procedures in this part.
83.7 Who can submit a petition on behalf of a class of employees?
83.8 How is a petition submitted?
83.9 What information must a petition include?
83.10 If a petition satisfies all relevant requirements under § 83.9, does this mean the class will be added to the Cohort?
83.11 What happens to petitions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?
83.12 How will NIOSH notify petitioners, the Board, and the public of petitions that have been selected for evaluation?
83.13 How will NIOSH evaluate petitions, other than petitions by claimants covered under § 83.14?
83.14 How will NIOSH evaluate a petition by a claimant whose dose reconstruction NIOSH could not complete under 42 CFR Part 82?
83.15 How will the Board consider and advise the Secretary on a petition?
83.16 How will the Secretary decide the outcome of a petition?
83.17 How will the Secretary report a final decision to add a class of employees to the Cohort and any action of Congress concerning the effect of the final decision?
83.18 How can the Secretary cancel or modify a final decision to add a class of employees to the Cohort?

Authority: 42 U.S.C. 7384q; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart A—Introduction

§ 83.0 Background information on the procedures in this part.

The Energy Employees Occupational Illness Compensation Program Act, as amended (''EEOICPA'' or ''the Act''), 42 U.S.C. 7384–7385, provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of DOE, its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two methods set forth in the statute for claimants to establish that a cancer incurred by a covered worker is compensable under EEOICPA. The first is to establish that the cancer is at least as likely as not related to covered employment at a DOE or Atomic Weapons Employer (''AWE'') facility pursuant to guidelines issued by the Department of Health and Human Services (''HHS''), which are found at 42 CFR part 81. The second method to establish that a cancer incurred by a covered worker is compensable under EEOICPA is to establish that the worker is a member of the Special Exposure Cohort (''the Cohort'') and suffered a specified cancer after beginning employment at a DOE facility or AWE facility. In Section 3621(14) of EEOICPA (42 U.S.C. 7384l(14)) Congress included certain classes of employees in the Cohort. Section 3626 of the Act (42 U.S.C. 7384q) authorizes the addition to the Cohort of other classes of employees. This authority has been delegated to the Secretary of HHS by Executive Order 13179.

§ 83.1 What is the purpose of the procedures in this part?

EEOICPA authorizes the President to add classes of employees to the Cohort, while providing Congress with the opportunity to review and expedite or reverse these decisions. The President delegated his authority to the Secretary of HHS. This part specifies the procedures by which HHS will determine whether to add new classes of employees from DOE and AWE facilities to the Cohort. HHS will consider adding new classes of employees in response to petitions by, or on behalf of, such classes of employees. The procedures specify requirements for petitions and for their consideration. These requirements are intended to ensure that petitions are submitted by authorized parties, are justified, and receive uniform, fair, scientific consideration. The procedures are also designed to give petitioners and interested parties opportunity for appropriate involvement in the process, and to ensure that the process is timely and consistent with requirements specified in EEOICPA. The procedures are not intended to provide a second opportunity to qualify a claim for compensation, once HHS has completed the dose reconstruction and DOL has determined that the cancer subject to the claim was not ''at least as likely as not'' caused by the estimated radiation doses. DOL has established procedures separate from those covered by this part, under 20 CFR part 30, for cancer claimants who want to contest the factual determinations or how NIOSH conducted their dose reconstructions.

§ 83.2 How will DOL use the designations established under the procedures in this part?

DOL will adjudicate compensation claims for members of classes of employees added to the Cohort according to the same general procedures that apply to the statutorily defined classes of employees in the Cohort. Specifically, DOL will determine whether the claim is for a qualified member of the Cohort with a specified cancer, pursuant to the procedures set forth in 20 CFR part 30.

Subpart B—Definitions

§ 83.5 Definitions of terms used in the procedures in this part.

(a) *Advisory Board on Radiation and Worker Health (''the Board'')* is a federal advisory committee established under EEOICPA and appointed by the President to advise HHS in implementing its responsibilities under EEOICPA.

(b) *Atomic Weapons Employer (''AWE'')* is a statutory term of EEOICPA which means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling: and,

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA.

(c) *Class of employees* means, for the purposes of this part, a group of employees who work or worked at the same DOE facility or AWE facility, and for whom the availability of information and recorded data on radiation exposures is comparable with respect to the informational needs of dose reconstructions conducted under 42 CFR part 82.

(d) *HHS* is the U.S. Department of Health and Human Services.

(e) *DOE* is the U.S. Department of Energy, which includes predecessor agencies of DOE, including the Manhattan Engineering District.

(f) *DOL* is the U.S. Department of Labor.

(g) *Employee,* for the purposes of these procedures, means a person who is or was, for the purposes of EEOICPA, an employee of DOE, a DOE contractor or subcontractor, or an Atomic Weapons Employer.

(h) *NIOSH* is the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(i) *OCAS* is the Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(j) *Petitioner* means an individual or organization that submits a petition on behalf of a class of employees and qualifies as a petitioner under § 83.7. A single petition shall only include up to three petitioners.

(k) *Radiation* means ionizing radiation, including alpha particles, beta particles, gamma rays, x rays, neutrons, protons and other particles capable of producing ions in the body. For the purposes of the proposed procedures, radiation does not include sources of non-ionizing radiation such as radio-frequency radiation, microwaves, visible light, and infrared or ultraviolet light radiation.

(l) *Secretary* is the Secretary of Health and Human Services.

(m) *Specified cancer,* as is defined in Section 3621(17) of EEOICPA (42 U.S.C. 7384l(17)) and the DOL regulation implementing EEOICPA (20 CFR 30.5(dd)), means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that onset of the disease was at least two years after initial occupational exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Bone cancer;

(4) Renal cancers;

(5) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease);

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;

(I) Gall bladder;

(J) Salivary gland;

(K) Urinary bladder;

(L) Brain;

(M) Colon;

(N) Ovary;

(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(n) Survivor means a surviving spouse, child, parent, grandchild and grandparent of a deceased covered employee as defined in EEOICPA.

Subpart C—Procedures for Adding Classes of Employees to the Cohort

§ 83.6 Overview of the procedures in this part.

The procedures in this part specify who may petition to add a class of employees to the Cohort, the requirements for such a petition, how a petition will be selected for evaluation by NIOSH and for the advice of the Board, and the process NIOSH, the Board, and the Secretary will use to consider a petition, leading to the Secretary's final determination to accept or deny adding a class to the Cohort. The rule provides for petitions in two distinct circumstances. One circumstance is when NIOSH has attempted to conduct a dose reconstruction for a cancer claimant, under 42 CFR Part 82, and finds that the dose reconstruction cannot be completed, because there is insufficient information to estimate the radiation doses of the claimant with sufficient accuracy. The second circumstance includes all other possibilities. For example, a petition may be submitted representing a class of employees whose members have yet to file claims under EEOICPA, or even have yet to be diagnosed with cancer. As required by EEOICPA (42 U.S.C. 7384l(14)(c)(ii)), the procedures in this part include formal notice to Congress of any decision by the Secretary to add a class to the Cohort, and the opportunity for Congress to expedite or change the outcome of the decision within 180 days.

§ 83.7 Who can submit a petition on behalf of a class of employees?

A petitioner or petitioners for a petition must be one or more, up to a maximum of three, of the following:

(a) One or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors; or

(b) One or more labor organizations representing or formerly having represented DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees; or

(c) One or more individuals or entities authorized in writing by one or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors.

§ 83.8 How is a petition submitted?

The petitioner(s) must send a petition in writing to NIOSH. A petition must provide identifying and contact information on the petitioner(s) and information to justify the petition, as specified under § 83.9. Detailed instructions for preparing and submitting a petition, including an optional petition form, are available from NIOSH through direct request (1–800–35–NIOSH) or on the Internet at *www.cdc.gov/niosh/ocas.*

§ 83.9 What information must a petition include?

(a) All petitions must provide identifying and contact information on the petitioner(s). The information required to justify a petition differs, depending on the basis of the petition. If the petition is by a claimant in response to a finding by NIOSH that the dose reconstruction for the claimant cannot be completed, then the petition must provide only the justification specified under paragraph (b) of this section. All other petitions must provide only the information specified under paragraph (c) of this section. The informational requirements for petitions are also summarized in Table 1 at the end of this section.

(b) The petition must notify NIOSH that the claimant is petitioning on the basis that NIOSH found, under 42 CFR 82.12, that the dose reconstruction for the claimant could not be completed due to insufficient records and information.

(c) The petition must include the following:

(1) A proposed class definition [1] specifying:

[1] HHS will determine the final class definition(s) for each petition (see § 83.16).

(i) The DOE facility or AWE facility [2] at which the class worked;

(ii) The location or locations at the facility covered by the petition (*e.g.,* building, technical area);

(iii) The job titles and/or job duties of the class members;

(iv) The period of employment relevant to the petition;

(v) Identification of any exposure incident that was unmonitored, unrecorded, or inadequately monitored or recorded, if such incident comprises the basis of the petition; and

(2) A description of the petitioner's (petitioners'') basis for believing records and information available are inadequate to estimate the radiation doses incurred by members of the proposed class of employees with sufficient accuracy. This description must include one of the following elements:

(i) Documentation or statements provided by affidavit indicating that radiation exposures and doses to members of the proposed class were not monitored, either through personal or area monitoring; or

(ii) Documentation or statements provided by affidavit indicating that radiation monitoring records for members of the proposed class have been lost, falsified, or destroyed; or

(iii) A report from a health physicist or other individual with expertise in dose reconstruction documenting the limitations of existing DOE or AWE records on radiation exposures at the facility, as relevant to the petition. This report should specify the basis for believing these documented limitations might prevent the completion of dose reconstructions for members of the class under 42 CFR Part 82 and related NIOSH technical implementation guidelines; or

(iv) A scientific or technical report, published or issued by a government agency of the Executive Branch of government or the General Accounting Office, the Nuclear Regulatory Commission, or the Defense Nuclear Facilities Safety Board, or published in a peer-reviewed journal, that identifies dosimetry and related information that are unavailable (due to either a lack of monitoring or the destruction or loss of records) for estimating the radiation doses of employees covered by the petition.

(3) If the petition is based on an exposure incident as described under paragraph (c)(1)(v) of this section, the petitioner(s) might be required to provide evidence that the incident occurred, but only if NIOSH is unable to obtain records or confirmation of the occurrence of such an incident from sources independent of the petitioner(s). Such evidence would not be required at the time the petition is submitted and the petitioner(s) would be directly informed of the need for this supplemental information. In such cases, either of the following may qualify as evidence:

(i) Medical evidence that one or more members of the class may have incurred a high level radiation dose from the incident, such as a depressed white blood cell count associated with radiation exposure or the application of chelation therapy; or

(ii) NIOSH will consider evidence provided by affidavit from one or more employees who witnessed the incident. If the petitioner cannot provide such affidavits because such employees are deceased, prevented by reasons of poor health or impairment, or cannot be identified or located, then the requirement for evidence provided by affidavit can be met by providing such an affidavit from one or more individuals who did not witness the incident, provided the individual was directly informed by one or more employees who witnessed the incident.[3]

(4) The provision of any evidence under this section or other provisions of this part, including one or more affidavits, would not, in and of itself, be sufficient to confirm the facts presented by that evidence. NIOSH will consider the adequacy and credibility of any evidence provided.

(5) If, under § 83.15(a), NIOSH has already issued a **Federal Register** notice scheduling a Board meeting to consider a petition concerning a class of employees, then any petitions for such a class of employees submitted following this notice must, under paragraph (c)(2) of this section, present substantially new information that has not already been considered by NIOSH. For this purpose, NIOSH would find that information has been already considered by NIOSH if it were included in the petition(s) that were already considered by NIOSH or if it were addressed either in the report(s) by NIOSH evaluating such a petition or petitions under § 83.13(c) or in a proposed decision by NIOSH responding to such a petition or petitions under § 83.16(a).

TABLE 1 FOR § 83.9: SUMMARY OF INFORMATIONAL REQUIREMENTS FOR ALL PETITIONS

[Petitioner(s) must submit identifying and contact information and either A. or B. of this table.]

A. The claimant's authorization of the petition, based on NIOSH having found it could not complete a dose reconstrucitn for the claimant submitting the petition; or.	B. (1) A proposed class definition identifying: (i) Facility, (ii) relevant locations at the facility; (iii) job titles/duties, (iv) period of employment, and if relevant, (v) exposure incident. (2) The basis for infeasibility of dose reconstruction; either: (i) lack of monitoring; or (ii) destruction, falsification, or loss of records; or (iii) expert report; or (iv) scientific or technical report.

§ 83.10 If a petition satisfies all relevant requirements under § 83.9, does this mean the class will be added to the Cohort?

Satisfying the informational requirements for a petition does not mean the class will be added to the Cohort. It means the petition will receive a full evaluation by NIOSH, the Board, and HHS, as described under §§ 83.13 through 83.16. The role of the petitioner(s) is to identify classes of employees that should be considered for addition to the Cohort.

§ 83.11 What happens to petitions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?

(a) NIOSH will notify the petitioner(s) of any requirements that are not met by the petition, assist the petitioner(s) with guidance in developing relevant information, and provide 30 calendar

[2] Depending on the factual circumstances present, a facility that meets the definition of an AWE facility or DOE facility covered under EEOICPA (42 U.S.C. 7384l(5) and (12)) could, among other possibilities, constitute a single building or structure, including the grounds upon which it is located, or a site encompassing numerous buildings or structures, including the grounds upon which it is located.

[3] An affidavit may be from a petitioner but HHS does not require that an affidavit be from a petitioner.

days for the petitioner(s) to revise the petition accordingly.

(b) After 30 calendar days from the date of notification under paragraph (a) of this section, NIOSH will notify any petitioner(s) whose petition remains unsatisfactory of the proposed finding of NIOSH that the petition fails to meet the specified requirements and the basis for this finding.

(c) A petitioner may request in writing a review of a proposed finding within 30 calendar days of notification under paragraph (b) of this section. Petitioners must specify why the proposed finding should be reversed, based on the petition requirements and on the information that the petitioners had already submitted. The request may not include any new information or documentation that was not included in the completed petition. If the petitioner obtains new information within this 30 day period, the petitioner should provide it to NIOSH. NIOSH will consider this new information as a revision of the petition under paragraph (a) of this section.

(d) Three HHS personnel, appointed by the Director of NIOSH, who were not involved in developing the proposed finding will complete reviews within 30 work days of the request for such a review. The Director of NIOSH will consider the results of the review and then make a final decision as to whether the petition satisfies the requirements for evaluation.

(e) Proposed findings established by NIOSH under paragraph (b) of this section will become final decisions in 31 calendar days if not reviewed under paragraph (d) of this section.

(f) Based on new information, NIOSH may, at its discretion, reconsider a decision not to select a petition for evaluation.

§ 83.12 How will NIOSH notify petitioners, the Board, and the public of petitions that have been selected for evaluation?

(a) NIOSH will notify the petitioner(s) in writing that it has selected the petition for evaluation. NIOSH will also provide the petitioner(s) with information on the steps of the evaluation and other processes required pursuant to these procedures.

(b) NIOSH will combine separate petitions and evaluate them as a single petition if, at this or at any point in the evaluation process under §§ 83.13 and 83.14, NIOSH finds such petitions represent the same class of employees.

(c) NIOSH will present petitions selected for evaluation to the Board with plans specific to evaluating each petition. Each evaluation plan will include the following elements:

(1) An initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation conducted under § 83.13 or § 83.14; and

(2) A list of activities for evaluating the radiation exposure potential of the class and the adequacy of existing records and information needed to conduct dose reconstructions for all class members under 42 CFR Part 82.

(d) NIOSH may initiate work to evaluate a petition immediately, prior to presenting the petition and evaluation plan to the Board.

(e) NIOSH will publish a notice in the **Federal Register** notifying the public of its decision to evaluate a petition.

§ 83.13 How will NIOSH evaluate petitions, other than petitions by claimants covered under § 83.14?

(a) NIOSH will collect information on the types and levels of radiation exposures that potential members of the class may have incurred, as specified under 42 CFR 83.14, from the following potential sources, as necessary:

(1) The petition or petitions submitted on behalf of the class;

(2) DOE and AWE facility records and information;

(3) Potential members of the class and their survivors;

(4) Labor organizations who represent or represented employees at the facility during the relevant period of employment;

(5) Managers, radiation safety officials, and other witnesses present during the relevant period of employment at the DOE facility or AWE facility;

(6) NIOSH records from epidemiological research on DOE populations and records from dose reconstructions conducted under 42 CFR part 82;

(7) Records from research, dose reconstructions, medical screening programs, and other related activities conducted to evaluate the health and/or radiation exposures of DOE employees, DOE contractor or subcontractor employees, and/or AWE employees; and

(8) Other sources.

(b) The Director of OCAS may determine that records and/or information requested from DOE, an AWE, or another source to evaluate a petition is not, or will not be, available on a timely basis. Such a determination will be treated, for the purposes of the petition evaluation, as equivalent to a finding that the records and/or information requested are not available.

(1) Before the Director of OCAS makes such a determination, the source(s) potentially in possession of such records and/or information will be allowed a reasonable amount of time, as determined by the Director of OCAS, to provide the records and/or information.

(2) Such a determination may take into account the types and quantity of records and/or information requested from the source, as well as any other factors that might be relevant to the judgment under paragraph (b)(1) of this this section of the amount of time that is reasonable to provide the records and/or information, which would be decided on a case-by-case basis by the Director of OCAS.

(c) NIOSH will evaluate records and information collected to make the following determinations:

(1) *Is it feasible to estimate the level of radiation doses of individual members of the class with sufficient accuracy?* (i) Radiation doses can be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose, for every type of cancer for which radiation doses are reconstructed, that could have been incurred in plausible circumstances by any member of the class, or if NIOSH has established that it has access to sufficient information to estimate the radiation doses of members of the class more precisely than an estimate of the maximum radiation dose. NIOSH must also determine that it has information regarding monitoring, source, source term, or process from the site where the employees worked to serve as the basis for a dose reconstruction. This basis requirement does not limit NIOSH to using only or primarily information from the site where the employee worked, but a dose reconstruction must, as a starting point, be based on some information from the site where the employee worked.

(ii) In many circumstances, to establish a positive finding under paragraph (c)(1)(i) of this section would require, at a minimum, that NIOSH have access to reliable information on the identity or set of possible identities and maximum quantity of each radionuclide (the radioactive source material) to which members of the class were potentially exposed without adequate protection. Alternatively, if members of the class were potentially exposed without adequate protection to unmonitored radiation from radiation generating equipment (*e.g.*, particle accelerator, industrial x-ray equipment), in many circumstances, NIOSH would require relevant equipment design and performance specifications or information on maximum emissions.

(iii) In many circumstances, to establish a positive finding under paragraph (c)(1)(i) of this section would

also require information describing the process through which the radiation exposures of concern may have occurred and the physical environment in which the exposures may have occurred.

(iv) In many circumstances, access to personal dosimetry data and area monitoring data is not necessary to estimate the maximum radiation doses that could have been incurred by any member of the class, although radiation doses can be estimated more precisely with such data.

(2) *How should the class be defined, consistent with the findings of the analysis discussed under paragraph (c)(1) of this section?* NIOSH will define the following characteristics of a class, taking into account the class definition proposed by the petition and modified as necessary to reflect the results of the evaluation under paragraph (c)(1) of this section:

(i) Any of the following employment parameters, as necessary to identify members included in the class: facility, job titles, duties, and/or specific work locations at the facility, the relevant time period, and any additional identifying characteristics of employment; and

(ii) If applicable, the identification of an exposure incident, when unmonitored radiation exposure during such an incident comprises the basis of the petition or the class definition.

(3) *Is there a reasonable likelihood that such radiation dose may have endangered the health of members of the class?* If it is not feasible to estimate with sufficient accuracy radiation doses for members of the class, as provided under paragraph (c)(1) of this section, then NIOSH must determine, as required by the statute, that *''there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class''* (42 U.S.C. 7384q(b)(2)).

(i) For classes of employees that may have been exposed to radiation during discrete incidents likely to have involved exceptionally high level exposures, such as nuclear criticality incidents or other events involving similarly high levels of exposures resulting from the failure of radiation protection controls, NIOSH will assume for the purposes of this section that any duration of unprotected exposure could cause a specified cancer, and hence may have endangered the health of members of the class. Presence with potential exposure during the discrete incident, rather than a quantified duration of potential exposure, will satisfy the health endangerment criterion.

(ii) For health endangerment not established on the basis of a discrete incident, as described under paragraph (c)(3)(i) of this section, NIOSH will specify a minimum duration of employment to satisfy the health endangerment criterion as having been employed for a number of work days aggregating at least 250 work days within the parameters established for the class or in combination with work days within the parameters established for one or more other classes of employees in the Cohort.

(d) NIOSH will submit a report of its evaluation findings to the Board and to the petitioner(s). The report will include the following elements:

(1) An identification of the relevant petitions;

(2) A proposed definition of the class or classes of employees to which the evaluation applies, and a summary of the basis for this definition, including, as necessary:

(i) Any justification that may be needed for the inclusion of groups of employees who were not specified in the original petition(s);

(ii) The identification of any groups of employees who were identified in the original petition(s) who should constitute a separate class of employees; or

(iii) The merging of multiple petitions that represent a single class of employees;

(3) The proposed class definition will address the following employment parameters:

(i) The DOE facility or the AWE facility that employed the class;

(ii) The job titles and/or job duties and/or work locations of class members;

(iii) The period of employment within which a class member must have been employed at the facility under the job titles and/or performing the job duties and/or working in the locations specified in this class definition;

(iv) If applicable, identification of an exposure incident, when potential radiation exposure during such an incident comprises the basis of the class definition;

(v) If necessary, any other parameters that serve to define the membership of the class; and

(vi) For a class for which it is not feasible to estimate radiation doses with sufficient accuracy, a minimum duration of employment within the parameters of the class for inclusion in the class, as defined under paragraph (c)(3) of this section;

(4) A summary of the findings concerning the adequacy of existing records and information for reconstructing doses for individual members of the class under the methods of 42 CFR Part 82, and a description of the evaluation methods and information upon which these findings are based; and

(5) For a class for which it is not feasible to estimate radiation doses with sufficient accuracy, a summary of the basis for establishing the duration of employment requirement with respect to health endangerment.

§ 83.14 How will NIOSH evaluate a petition by a claimant whose dose reconstruction NIOSH could not complete under 42 CFR Part 82?

(a) NIOSH may establish two classes for evaluation, to permit the timely adjudication of the existing cancer claim:

(1) A class of employees defined using the research and analyses already completed in attempting the dose reconstruction for the employee identified in the claimant's petition; and

(2) A class of co-workers similar to the class defined under paragraph (a)(1) of this section, to be defined by NIOSH on the basis of further research and analyses, using the procedures under § 83.13.

(b) NIOSH will determine the health endangerment criteria for adding the class under paragraph (a)(1) of this section to the Cohort, using the procedures under § 83.13. NIOSH will report to the Board and to petitioner(s) the results of this determination, together with its finding under 42 CFR Part 82 that there was insufficient information to complete the dose reconstruction. HHS will consider this finding under 42 CFR Part 82 sufficient, without further consideration, to determine that it is not feasible to estimate the levels of radiation doses of individual members of the class with sufficient accuracy.

(c) NIOSH will evaluate the petition as it may concern a class of co-workers, as described under paragraph (a)(2) of this section, according to the procedures under § 83.13.

§ 83.15 How will the Board consider and advise the Secretary on a petition?

(a) NIOSH will publish a notice in the **Federal Register** providing notice of a Board meeting at which a petition will be considered, and summarizing the petition to be considered by the Board at the meeting and the findings of NIOSH from evaluating the petition.

(b) The Board will consider the petition and the NIOSH evaluation report at the meeting, to which the petitioner(s) will be invited to present views and information on the petition and the NIOSH evaluation findings. In

considering the petition, both NIOSH and the members of the Board will take all steps necessary to prevent the disclosure of information of a personal nature, concerning the petitioners or others, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(c) In considering the petition, the Board may obtain and consider additional information not addressed in the petition or the initial NIOSH evaluation report.

(d) NIOSH may decide to further evaluate a petition, upon the request of the Board. If NIOSH conducts further evaluation, it will report new findings to the Board and the petitioner(s).

(e) Upon the completion of NIOSH evaluations and deliberations of the Board concerning a petition, the Board will develop and transmit to the Secretary a report containing its recommendations. The Board's report will include the following:

(1) The identification and inclusion of the relevant petition(s);

(2) The definition of the class of employees covered by the recommendation;

(3) A recommendation as to whether or not the Secretary should designate the class as an addition to the Cohort;

(4) The relevant criteria under § 83.13(c) and findings and information upon which the recommendation is based, including NIOSH evaluation reports, information provided by the petitioners, any other information considered by the Board, and the deliberations of the Board.

§ 83.16 How will the Secretary decide the outcome(s) of a petition?

(a) The Director of NIOSH will propose, and transmit to all affected petitioners, a decision to add or deny adding classes of employees to the Cohort, including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the proposed decision is based. This proposed decision will take into consideration the evaluations of NIOSH and the report and recommendations of the Board, and may also take into consideration information presented or submitted to the Board and the deliberations of the Board. In the case of a petition that NIOSH has determined encompasses more than one class of employees, the Director of NIOSH will issue a separate proposed decision for each separate class of employees.

(b) HHS will only allow the petitioner(s) to contest a proposed decision to deny adding a class to the Cohort or to contest a health endangerment determination under § 83.13(c)(3)(ii). Such challenges must be submitted in writing within 30 calendar days and must include evidence that the proposed decision relies on a record of either substantial factual errors or substantial errors in the implementation of the procedures of this part. Challenges may not introduce new information or documentation concerning the petition or the NIOSH or Board evaluation(s) that was not submitted or presented by the petitioner(s) or others to NIOSH or to the Board prior to the Board's issuing its recommendations under § 83.15.

(c) A panel of three HHS personnel, independent of NIOSH and appointed by the Secretary, will conduct an administrative review based on a challenge submitted under paragraph (b) of this section and provide recommendations of the panel to the Secretary concerning its merits and the resolution of issues contested by the challenge. Reviews by the panel will consider, in addition to the views and information submitted by the petitioner(s) in the challenge, the proposed decision, the NIOSH evaluation report(s), and the report containing the recommendations of the Board issued prior to the proposed decision under § 83.15. The reviews may also consider information presented or submitted to the Board and the deliberations of the Board prior to the issuance of the recommendations of the Board under § 83.15. The panel shall consider whether HHS substantially complied with the procedures of this part, the factual accuracy of the information supporting the proposed decision, and the principal findings and recommendations of NIOSH and those of the Board issued under § 83.15.

(d) The Secretary will make the final decision to add or deny adding a class to the Cohort, including the definition of the class, after considering information and recommendations provided to the Secretary by NIOSH, the Board, and from an HHS administrative review when such a review is conducted under paragraph (c) of this section. HHS will transmit a report of the decision to the petitioner(s), including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the decision is based. HHS will also publish a notice summarizing the decision in the **Federal Register**.

§ 83.17 How will the Secretary report a final decision to add a class of employees to the Cohort and any action of Congress concerning the effect of the final decision?

(a) If the Secretary designates a class of employees to be added to the Cohort, the Secretary will transmit to Congress a report providing the designation, the definition of the class of employees covered by the designation, and the criteria and findings upon which the designation was based.[4]

(b) A designation of the Secretary will take effect 180 calendar days after the date on which the report of the Secretary is submitted to Congress, unless Congress takes an action that reverses or expedites the designation.

(c) After either the expiration of the congressional review period or notification of final congressional action, whichever comes first, the Secretary will transmit to DOL and to the petitioner(s) a report providing the definition of the class and one of the following outcomes:

(1) The addition of the class to the Cohort; or

(2) The result of any action by Congress to reverse or expedite the decision of the Secretary to add the class to the Cohort.

(d) The report specified under paragraph (c) of this section will be published on the Internet at *www.cdc.gov/niosh/ocas* and in the **Federal Register**.

§ 83.18 How can the Secretary cancel or modify a final decision to add a class of employees to the Cohort?

(a) The Secretary can cancel a final decision to add a class to the Cohort, or can modify a final decision to reduce the scope of a class added by the Secretary, if HHS obtains records relevant to radiation exposures of members of the class that enable NIOSH to estimate the radiation doses incurred by individual members of the class through dose reconstructions conducted under the requirements of 42 CFR Part 82.

(b) Before canceling a final decision to add a class or modifying a final decision to reduce the scope of a class, the Secretary intends to follow evaluation procedures that are substantially similar to those described in this part for adding a class of employees to the Cohort. The procedures will include the following:

(1) Publication of a notice in the **Federal Register** informing the public of the intent of the Secretary to review the final decision on the basis of new information and describing procedures for this review;

[4] See 42 U.S.C. 7384l(14)(C)(ii).

(2) An analysis by NIOSH of the utility of the new information for conducting dose reconstructions under 42 CFR Part 82; the analysis will be performed consistently with the requirements for analysis of a petition by NIOSH under §§ 83.13(c)(1) and (2), and 83.13(c)(2) and (3);

(3) A recommendation by the Board to the Secretary as to whether or not the Secretary should cancel or modify his final decision that added the class to the Cohort, based upon a review by the Board of the NIOSH analysis under paragraph (b)(2) of this section and any other relevant information considered by the Board;

(4) An opportunity for members of the class to contest a proposed decision to cancel or modify the prior final decision that added the class to the Cohort, including a reasonable and timely effort by the Secretary to notify members of the class of this opportunity; and

(5) Publication in the **Federal Register** of a final decision to cancel or modify the prior final decision that added the class to the Cohort.

Dated: February 23, 2004.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 04–11930 Filed 5–27–04; 8:45 am]

BILLING CODE 4510–43–P

Federal Register

Friday,
May 28, 2004

Part V

Department of Education

Office of Safe and Drug-Free Schools; Notice of Final Priority and Other Application Requirements; Overview Information, Emergency Response and Crisis Management Grant Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notices

DEPARTMENT OF EDUCATION

RIN 1865–ZA01

[CFDA 84.184E]

Office of Safe and Drug-Free Schools; Notice of Final Priority and Other Application Requirements

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final priority and other application requirements.

SUMMARY: The Deputy Under Secretary for Safe and Drug-Free Schools announces a priority and other application requirements under the Emergency Response and Crisis Management Grant program. The Deputy Under Secretary may use this priority and these application requirements for competitions in fiscal year (FY) 2004 and later years. We intend the priority to focus Federal financial assistance on supporting grants to local educational agencies (LEAs) in improving and strengthening emergency response and crisis management plans.

DATES: *Effective Date:* This priority and other application requirements is effective June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Sara Strizzi, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E320, Washington, DC 20202. Telephone: (202) 708–4850 or via Internet: *sara.strizzi@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The events of September 11, 2001, made schools and communities aware that, in addition to planning for traditional crises and emergencies, schools must now plan to respond to possible terrorist attacks on campus or in the community. The purpose of this program is to support LEA projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level, addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include training for school personnel, students, and parents in emergency response procedures and must include coordination with local law enforcement, public safety, health, and mental health agencies.

We published a notice of proposed priority and other application requirements for this program in the **Federal Register** on March 25, 2004 (69 FR 15303).

There are no differences between the notice of proposed priority and other application requirements and this notice of final priority and other application requirements.

Analysis of Comments and Changes: In response to our invitation in the notice of proposed priority and other application requirements, two parties submitted comments. An analysis of the comments follows. None of the comments resulted in changes in the priority and other application requirements since publication of the notice of proposed priority and other application requirements.

Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

Comment: One commenter recommended requiring coordination with local substance abuse agencies and/or behavioral health providers. In addition, the commenter requested that applicants be required to show how both mental health and substance abuse concerns will be addressed among school-aged youth.

Discussion: In some States and localities, local substance abuse prevention agencies are separate from mental health agencies. In other States and localities, the mental health and substance abuse authorities at the State and local level are combined. Because of the variation in these structures, we would have no way of knowing which applicants are in localities in which separate local agencies for public mental health and substance prevention exist, and which would require an additional Emergency Response and Crisis Management partner if we adopted the change requested by the commenter. As a result, we would be unable to make an accurate determination regarding an applicant's eligibility. We strongly encourage applicants for grants under this program to partner with a range of community organizations and entities whose participation would enhance and support their emergency response and crisis management plan. Those LEAs situated in localities that have a separate local substance abuse prevention agency certainly may include that agency as an Emergency Response and Crisis Management partner; and activities included under the Recovery Phase of crisis response planning certainly may include activities related to substance abuse needs among school-aged youth as related to a particular crisis, and we encourage all LEAs to address those potential needs in their comprehensive plans. However, given the variation in the structure of local substance abuse prevention agencies and mental health agencies described above, it is not administratively feasible under this competition to require all LEA applicants to have a local substance abuse prevention agency as a partner as a condition for receiving one of these grants.

Change: None.

Comment: One commenter suggested that the priority allow for funding of a school-based Public Access Defibrillation Program.

Discussion: The priority does not preclude implementation of a school-based Public Access Defibrillation Program.

Change: None.

Note: This notice does not solicit applications. In any year in which we choose to use this priority and other application requirements, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Improvement and Strengthening of School Emergency Response and Crisis Management Plans

The priority supports LEA projects to improve and strengthen emergency response and crisis management plans, at the district and school building level,

addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include training for school personnel, students, and parents in emergency response procedures and must include coordination with local law enforcement, public safety, health, and mental health agencies.

Other Application Requirements

In order to develop high-quality emergency response and crisis management plans under this priority, LEAs need to involve community partners in all aspects of planning. We establish the following application requirements:

To be considered for a grant award, an applicant must include in its application an agreement that details the participation of the LEA and the following five community-based partners from the local area: Law enforcement, public safety, health, mental health, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must detail the roles and responsibilities that each of the required partners will have in improving and strengthening the plan. The agreement must also reflect each partner's commitment to sustainability and continuous improvement of the plan. Finally, the agreement must include an authorized signature representing the LEA and each community-based partner.

If one or more of the five partners listed is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include signed agreements from at least the LEA and two of the required five partners, and explanations for the absence of any of the remaining required partners.

Applications that fail to include the required agreement, including roles and responsibilities, commitment to sustainability and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Furthermore, all emergency response and crisis management plans must be coordinated with the Homeland Security Plan of the State in which the LEA is located. All States submitted such a plan to the Department of Homeland Security on January 30, 2004. To ensure that emergency services are coordinated within the State, the LEA must follow the requirements of the State Homeland Security Plan for informing and working with State personnel on emergency services and initiatives.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

The plan must also take into consideration the communication, transportation, and medical needs of individuals with disabilities within this community.

Grantees who received funding under this priority in FY 2003 are not eligible applicants for FY 2004.

Executive Order 12866

This notice of final priority and other application requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority and other application requirements, we have determined that the benefits of the final priority and other application requirements justify the costs.

We have also determined that this regulatory action does not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits in the notice of proposed priority and other application requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following sites: *www.ed.gov/emergencyplan* and *www.ed.gov/offices/OSDFS*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7131.

(Catalog of Federal Domestic Assistance Number 84.184.E-Emergency Response and Crisis Management Grant program)

Dated: May 25, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–12170 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools, Overview Information, Emergency Response and Crisis Management Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184E.

Dates: Applications Available: May 28, 2004.

Deadline for Transmittal of Applications: July 9, 2004. Deadline for Intergovernmental Review: August 9, 2004.

Eligible Applicants: Local educational agencies (LEAs). Grantees that received funding under this priority in FY 2003 are not eligible applicants for FY 2004.

Estimated Available Funds: $27,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and

$500,000 for large districts (76 or more school facilities).

Estimated Number of Awards: 100.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Emergency Response and Crisis Management grant competition supports efforts by LEAs to improve and strengthen their school emergency response and crisis management plans, including training school personnel, students and parents in emergency response procedures and coordinating with local law enforcement, public safety, health, and mental health agencies.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only those applications that meet this priority.

This priority supports LEA projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level, while addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include training for school personnel, students, and parents in emergency response procedures and must include coordination with local law enforcement, public safety, health, and mental health agencies.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priority and other application requirements published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants to Local Educational Agencies

Estimated Available Funds: $27,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and $500,000 for large districts (76 or more school facilities).

Estimated Number of Awards: 100.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs. Grantees that received funding under this priority in FY 2003 are not eligible applicants in FY 2004.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:*

(a) *Required Partners and Agreement.*

In order to be considered for a grant award, an applicant must include in its application an agreement that details the participation of the LEA and the following five community-based partners from the local area: Law enforcement, public safety, health, mental health, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must detail the roles and responsibilities that each of the required partners will have in improving and strengthening the plan. The agreement must also reflect each partner's commitment to sustainability and continuous improvement of the plan. Finally, the agreement must include an authorized signature representing the LEA and each community-based partner.

If one or more of the five partners listed is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include signed agreements from at least the LEA and two of the required five partners, and explanations for the absence of any of the remaining required partners.

Applications that fail to include the required agreement, including roles and responsibilities and commitment to sustainability and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

(b) *Coordination with Homeland Security.*

All emergency response and crisis management plans must be coordinated with the Homeland Security Plan of the State in which the LEA is located. All States submitted such a plan to the Department of Homeland Security on January 30, 2004. To ensure that emergency services are coordinated within the State, the LEA must follow the requirements of the State Homeland Security Plan for informing and working with State personnel on emergency services and initiatives.

(c) *Individuals with Disabilities.*

The plan must also take into consideration the communication, transportation, and medical needs of individuals with disabilities within this community.

(d) *Equitable Participation by Private School Children and Teachers.*

SEAs, LEAs or other entities are required to provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, the SEA, LEA or other entity must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an LEA must consult with private school officials on issues such as: Hazards/vulnerabilities unique to private schools in the LEA's service area; and existing emergency management plans and crisis response resources already available at private schools.

(e) *Maintenance of Effort.*

Section 9521 of the ESEA requires that LEAs may receive a grant only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED

Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184E.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. You may access the electronic version of the application at the following Web site: *http://www.ed.gov/programs/dvpemergencyresponse/index.html*.

3. *Submission Dates and Times: Applications Available:* May 28, 2004.

Deadline for Transmittal of Applications: July 9, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 9, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under the Emergency Response and Crisis Management competition—CFDA Number 84.184E be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*.

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Sara Strizzi, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E320, Washington, DC 20202. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Emergency Response and Crisis Management—CFDA Number 84.184E is one of the programs included in the pilot project. If you are an applicant under the Emergency Response and Crisis Management competition, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- 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 must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application

electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Emergency Response and Crisis Management at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. In addition, periodic interim performance reports, outlining progress on the grant, are also required.

4. *Performance Measures:* The Secretary has established the following performance measures for assessing the effectiveness of the Emergency Response and Crisis Management Grant Program:

- Demonstration of increased number of hazards addressed by the improved school emergency response plan as compared to the baseline plan;
- Demonstration of improved response time and quality of response to practice drills and simulated crises; and
- A plan for and commitment to the sustainability and continuous improvement of the school emergency response plan by the district and community partners beyond the period of Federal financial assistance.

These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these outcomes in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their final performance report about progress toward these goals.

VII. Agency Contact

For Further Information Contact: Sara Strizzi, U.S. Department of Education, 400 Maryland Ave., SW., room 3E320, Washington, DC 20202–6450. Telephone: (202) 708–4850 or by email: *sara.strizzi@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: May 25, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–12171 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
May 28, 2004

Part VI

Department of Education

Office of Safe and Drug-Free Schools; Overview Information; Mentoring Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notices

DEPARTMENT OF EDUCATION

RIN 1865–ZA00

Office of Safe and Drug-Free Schools—Mentoring Programs

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final priorities, requirements, and selection criteria under the Mentoring Program.

SUMMARY: The Deputy Under Secretary for Safe and Drug-Free Schools announces final priorities, requirements, and selection criteria under the Mentoring Program. The Deputy Under Secretary will use these priorities, requirements, and selection criteria for a competition in FY 2004 and may use them in later years.

DATES: *Effective Date:* These priorities are effective July 7, 2004.

FOR FURTHER INFORMATION CONTACT: Earl Myers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E254, Washington, DC 20202–6450. Telephone: (202) 708–8846. E-mail address: *earl.myers@ed.gov,* or

Bryan Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202–6450. Telephone: (202) 260–2391. E-mail address: *bryan.williams@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: We published a notice of proposed priorities, requirements, and selection criteria for this program in the **Federal Register** on March 15, 2004 (69 FR 12138).

In response to the comments received, this notice of final priorities, requirements, and selection criteria contains significant changes from the notice of proposed priorities. We have revised the proposed definition of school-based mentoring; added a new factor to the selection criterion ''Quality of the Project Design'' and revised the point distribution within that criterion; and changed the proposed Application Requirement for community-based organizations. We fully explain these changes in the Appendix—Analysis of Comments and Changes found elsewhere in this notice.

Note: This notice does not solicit applications. In any year in which we choose to use these final priorities, requirements, and selection criteria, we invite applications through a notice in the **Federal Register**. A notice inviting applications for new awards under this program for FY 2004 is published elsewhere in this issue of the **Federal Register**.

Absolute Priority

This priority supports projects that address the academic and social needs of children with the greatest need through school-based mentoring programs and activities and provide these students with mentors. These programs and activities must serve children with the greatest need in one or more grades 4 through 8 living in rural areas, high-crime areas, or troubled home environments, or who attend schools with violence problems.

Competitive Preference Priority

We will award five additional points to a consortium of eligible applicants that includes either: (a) At least one local educational agency (LEA) and at least one community-based organization (CBO) that is not a school and that provides services to youth and families in the community; or (b) at least one private school that qualifies as a nonprofit CBO and at least one other CBO that is not a school, and that provides services to youth and families in the community.

The consortium must designate one member of the group to apply for the grant, unless the consortium is itself eligible as a partnership between a LEA and a nonprofit CBO.

To receive this competitive preference, the applicant must clearly identify the agencies that comprise the consortium and must include a detailed plan of their working relationship and of the activities that each member will perform, including a project budget that reflects the contractual disbursements to the members of the consortium. For the purpose of this priority, a ''consortium'' means a group application in accordance with the provisions of 34 CFR 75.127 through 75.129.

Eligibility Requirements for All Applicants

To be eligible for funding, an applicant must include in its application an assurance that it will: (1) Establish clear, measurable performance goals; and (2) collect and report to the Department data related to the established Government Performance and Results Act (GPRA) performance indicators for the Mentoring Programs grant competition. We will reject any application that does not contain this assurance.

Application Requirements for CBOs

To be eligible for funding, each CBO must include in its application an assurance that: (a) It is an eligible applicant under the definitions provided in the application package; (b) timely and meaningful consultation with an LEA or private school has taken place during the design and/or development of the proposed program; (c) LEA or private school staff will participate in the identification and referral of students to the CBO's proposed program; and (d) the LEA or private school will participate in the collection of data related to the established GPRA performance measures for the Mentoring Programs grant competition.

Definitions

(1) The term ''school-based mentoring'' means mentoring activities that are closely coordinated with schools, including involving teachers, counselors, and other school staff in the identification and referral of students, and that are focused on improved academic achievement, reduced student referrals for disciplinary reasons, increased bonding to school, and positive youth development. (2) The term ''core academic subjects'' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Performance Measures

We have identified the following key GPRA performance measures for assessing the effectiveness of this program: (1) The percentage of student/mentor matches that are sustained for a period of twelve months will increase; (2) The percentage of mentored students who demonstrate improvement in core academic subjects as measured by grade point average after 12 months will increase; and (3) The percentage of mentored students who have unexcused absences from school will decrease.

Selection Criteria

The Deputy Under Secretary will use the following selection criteria to evaluate applications under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(1) *Need for the Project.* (10 points)

In determining the need for the proposed project, the following factor is considered:

The magnitude and severity of problems that will be addressed by the project, including the number of youth to be served who: (i) Are at risk of educational failure or dropping out of school, (ii) are involved in criminal, delinquent, or gang activities, or (iii) lack strong, positive role models. (10 points)

(2) *Quality of the Project Design.* (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The degree to which the applicant proposes a high-quality mentoring project that provides for, but is not limited to: (1) A low student-to-mentor ratio (one-to-one, where practicable), (2) frequent contacts between mentors and the children they mentor; and (3) mentoring relationships of 12 months or more duration. (10 points)

(b) The quality of mentoring services that will be provided, including the quality of services designed to improve academic achievement in core academic subjects, strengthen school bonding (*i.e.*, positive commitment and attachment to school), and promote pro-social norms and behaviors, and the resources, if any, that the eligible entity will dedicate to providing children with opportunities for job training or postsecondary education. (5 points)

(c) The capability of each eligible entity to implement its mentoring program effectively, and the degree to which parents, teachers, community-based organizations, and the local community have participated, or will participate, in the design and implementation of the proposed mentoring project. (5 points)

(d) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, including new research, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives. (10 points)

(3) *Quality of the Management Plan.* (35 points)

In determining the quality of the management plan, the following factors are considered:

(a) The quality of the system that will be used to manage and monitor mentor reference checks, including, at a minimum, child and domestic abuse record checks and criminal background checks. (10 points)

(b) The quality of the training that will be provided to mentors, including orientation, follow-up, and support of each match between mentor and child. (10 points)

(c) The quality of the applicant's plan to recruit and retain mentors, including outreach, criteria for recruiting mentors, terminating unsuccessful matches, and replacing mentors, if necessary. (5 points)

(d) The extent to which the applicant provides a comprehensive plan to match mentors with students, based on the needs of the children, including criteria for matches, and the extent to which teachers, counselors, and other school staff are involved. (5 points)

(e) The extent to which the applicant demonstrates the ability to carefully monitor and support the mentoring matches, including terminating matches when necessary and reassigning students to new mentors, and the degree to which the mentoring program will continue to serve children from the 9th grade through graduation from secondary school, as needed. (5 points)

(4) *Quality of Project Personnel.* (10 points)

In determining the quality of project personnel, the Secretary considers:

The qualifications and relevant training of key staff, including time commitments, and experience in mentoring services and case management. (10 points)

(5) *Quality of the Project Evaluation.* (15 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation will provide performance feedback to the Department, grantees, and mentors, and permit periodic assessment of progress toward achieving intended outcomes, including the GPRA performance measures for the Mentoring Programs grant competition. (5 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data on the GPRA performance measures for the Mentoring Programs grant competition. (10 points)

Executive Order 12866

This notice of final priorities, requirements, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities, requirements, and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, requirements, definitions, and selection criteria we have determined that the benefits of the final priorities justify the costs.

We summarized the costs and benefits in the notice of proposed priorities, requirements, and selection criteria.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Regulations: 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99 and 299.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Electronic Access To This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/dvpmentoring/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.184B Office of Safe and Drug-Free Schools—Mentoring Programs)

Program Authority: 20 U.S.C. 7140.

Dated: May 26, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

Appendix—Analysis of Comments and Changes

In response to the invitation in the notice of proposed priorities, requirements, and selection criteria, 182 parties submitted comments. An analysis of the comments and of any changes since publication of the notice of proposed priorities, requirements, and selection criteria follows, grouped by major issues according to subject.

Generally, we do not address technical and other minor changes, and suggested changes we are not authorized to make under the applicable statutory authority.

Absolute Priority

Comment: Over 150 commenters stated that the Department should not limit the program to school-based mentoring programs.

Discussion: The proposed priority is consistent with the program statute, which directs the Secretary to give priority to school-based mentoring programs.

Change: To allow for greater flexibility, we have revised the definition of ''school-based mentoring'' to mean mentoring activities that are closely coordinated with schools, including involving teachers, counselors, and other school staff in the identification and referral of students, and that are focused on improved academic achievement, reduced student referrals for disciplinary reasons, increased bonding to school, and positive youth development.

Comment: Five commenters supported limiting the priority to school-based mentoring.

Discussion: We agree that school-based mentoring is an effective strategy to address the statutory goals of the program.

Change: None.

Comment: Four commenters recommended that the Department not limit the program to students in grades 4 through 8.

Discussion: The transition from childhood to adolescence is a particularly critical developmental time in a young person's life. Children often initiate harmful behaviors, such as using alcohol, tobacco, and other drugs, in the middle school years, and one consequence of this early initiation is that they are more likely to develop future patterns of harmful behavior. Given the need for additional support during this vulnerable time, we believe that it is beneficial to focus prevention strategies on youth making the transition from middle school to high school.

Change: None.

Comment: One commenter stated that we should target schools with high dropout rates, as well as high rates of students eligible for free and reduced lunch, and low-income areas.

Discussion: Our target population is consistent with the program statute, which requires the Secretary to give priority to each eligible entity that serves children with the greatest need living in rural areas, high-crime areas, or troubled home environments, or who attend schools with violence problems.

Change: None.

Comment: One commenter stated that it is not always an improvement to build on the infrastructure and support available in school settings. The commenter contended that community-based organizations also have infrastructure and support that can be built upon while allowing CBOs to specialize in the area of focus: mentoring.

Discussion: We agree that effective mentoring can occur in a variety of settings. In response to the statutory requirement to focus on youth who are most at risk of educational failure, dropping out of school, or involvement in criminal or delinquent activities or who lack strong positive role models, we have determined that the focus of this program should be on school-based mentoring programs.

Change: As discussed elsewhere in this *Analysis of Comments and Changes* section, to allow for greater flexibility, we have revised the definition of ''school-based mentoring.''

Comment: One commenter questioned why we are focusing services on youth who are most at risk of educational failure, dropping out of school, or involvement in criminal or delinquent activities, or who lack strong positive role models when mentoring research consistently demonstrates that mentoring works when it is used as prevention.

Discussion: Our focus is dictated by the statutory purpose of the Mentoring Programs as stated in section 4130 of the Elementary and Secondary Education Act of 1965, as amended. The purpose is to make assistance available to promote mentoring programs for children with greatest need, meaning a child who is at risk of educational failure, dropping out of school, or involvement in criminal or delinquent activities, or who lacks strong positive role models.

Change: None.

Comment: One commenter objected to our goal of sustaining mentoring matches for 12 months or more and encourages us to use six months as the standard.

Discussion: The program statute directs us to take into consideration the degree to which the eligible entity can ensure that mentors will develop longstanding relationships with the children they mentor. Preliminary findings from those who are involved in mentoring strongly suggest that duration is a critical factor to the success of any mentoring relationship, and we do not believe that a period of less than 12 months is of sufficient duration to qualify as a longstanding relationship.

Change: None.

Comment: One commenter noted that it would be a mistake to force projects to focus primarily on academic needs of children.

Discussion: The absolute priority requires applicants to focus on both the academic and social needs of children.

Change: None.

Competitive Preference Priority

Comment: Four commenters recommended that we give a competitive preference priority to novice applicants.

Discussion: A competitive preference was offered for novice applicants in the mentoring program competition in 2002. This year the competitive preference priority will award five additional points to a consortium of eligible applicants that includes either: (a) At least one LEA and at least one CBO that is not a school and that provides services to youth and families in the community; or (b) at least one private school that qualifies as a nonprofit CBO and at least one CBO that is not a school and that provides services to youth and families in the community.

We hope that this collaborative approach will result in diverse and effective mentoring programs rooted in the community and able to call upon multiple sources of support. Novice applicants may still qualify for the competitive preference points by entering into partnerships as described.

Change: None.

Comment: One commenter stated that partnering with an LEA places an administrative burden on community-based organizations, and recommended that the competitive preference priority be revised to allow community-based organizations the option to partner with a school within an LEA.

Discussion: To qualify as a consortium, a group must be comprised of entities that are eligible applicants under the program. Under the authorizing statute for Mentoring Programs, only local educational agencies and nonprofit, community-based organizations are eligible applicants. Schools within LEAs are not eligible applicants.

Change: None.

Comment: One commenter objected to the competitive preference for consortia and noted that many CBOs can provide quality mentoring services without entering into partnerships with LEAs.

Discussion: Community-based organizations are not required to enter into partnerships with LEAs to be eligible for funding. If they choose to do so, they are eligible for an additional five points under the competitive preference priority.

Change: None.

Eligibility Requirements

Comment: One commenter proposed, as an eligibility requirement, that all applicants provide statistics to show a decrease in out-of-school suspensions.

Discussion: We expect that one outcome of effective mentoring programs will be a decrease in suspensions from school. We do not think, however, that applicants need to demonstrate, in advance of receiving a grant, that this reduction has already occurred.

Change: None.

Application Requirements for CBOs

Comment: One commenter stated that each community-based organization that is eligible to apply for funding should have the option to submit a letter of agreement to participate, either from an LEA or from a single school.

Discussion: Because the focus of the program is school-based mentoring, it is necessary to ensure that all applicants have the appropriate authorization to carry out their program in conjunction with a school.

Change: We have revised the Application Requirements for Community-based Organizations to require each applicant to

provide an assurance that: (a) It is an eligible applicant under the definitions provided in the application package; (b) timely and meaningful consultation with an LEA or private school has taken place during the design and/or development of the proposed program; (c) LEA or private school staff will participate in the identification and referral of students to the CBO's proposed program; and (d) the LEA or private school will participate in the collection of data related to the established GPRA performance measures for the Mentoring Programs grant competition.

Definitions

Comment: One party recommended that transitional youth be included as a focus of the program, including youth ages 17–21.

Discussion: The program statute limits program services to youth that have not yet graduated from secondary school. Youth that are beyond this age are not eligible.

Change: None.

Comment: One commenter suggested adding the following characteristics to the definition of at-risk youth: emotionally depressed, uninspired intellectually, and those trying to survive desperate living conditions.

Discussion: This program is designed to assist children with the greatest need. The definition of a child with the greatest need is provided in the statute authorizing this program.

Change: None.

Comment: Five commenters recommended changes to the definition of ''school-based mentoring.'' One recommended that the definition include mentoring that is initiated at and accountable to a school site and that has a declared academic goal (or outcomes). Another suggested that mentoring be permitted at CBO training facilities and on field trips. A third commenter asked that mentoring programs not be restricted to activities on school grounds. The fourth commenter recommended revising the definition of school-based mentoring to say ''including activities on school grounds.'' The last commenter recommends that the definition of school-based mentoring be changed to uncouple it from ''site-based mentoring.''

Discussion: We concur with the recommendations to allow greater flexibility in the location of program activities.

Change: As discussed elsewhere in this *Analysis of Comments and Changes section,* we have revised the definition of the term ''school-based mentoring'' to provide more flexibility for mentoring services.

Comment: One commenter stated that a conflict in the priorities is created by requiring activities to occur on school grounds and also requiring them to continue for at least 12 months. This will increase the administrative burden placed on schools by requiring them to stay open for mentoring activities during the summer months.

Discussion: We have revised the definition of school-based mentoring to allow applicants greater flexibility in implementing program activities at locations other than school grounds.

Change: The definition of the term ''school-based mentoring'' has been revised as described elsewhere in this *Analysis of Comments and Changes section* of this notice.

Performance Measures

Comment: One commenter recommended that the Department place less emphasis on academic performance in the GPRA performance measures for the program.

Discussion: One of the statutory purposes of the Mentoring Programs is to improve the academic performance of children with the greatest need. Therefore, we have determined that academic improvement is a key performance measure for assessing the effectiveness of the Mentoring Programs.

Change: None.

Comments: One commenter recommended that the GPRA performance measure on student/mentor matches be revised from a period of time of twelve months to a period of time of nine months or longer.

Discussion: Preliminary evidence from individuals who are involved in mentoring strongly suggests that one characteristic of positive mentoring relationships is significant duration. Therefore, while the academic school year in most parts of the country lasts nine months, applicants will be encouraged to propose programs that will result in mentoring relationships of significant duration, meaning those that last at least 12 months. Our view is that relationships sustained for a period of 12 months or longer is a key performance measure for assessing the effectiveness of the Mentoring Program.

Change: None.

Comment: One commenter noted that the 12-month tracking requirement could present a challenge in districts where students tend to be very transient.

Discussion: We agree that potential transience is a factor that can affect results. However we believe that building longstanding relationships, meaning those that last at least 12 months, is an appropriate goal and one that is consistent with the findings from the research on mentoring.

Change: None.

Comment: One commenter proposed that ED clarify whether ''unexcused absences'' means unexcused absence from school or from mentoring meetings.

Discussion: We intend this term to mean unexcused absence from school.

Change: We have revised the performance measure to clarify the meaning of unexcused absences.

Comment: One commenter recommended adding ''an increased percentage of students develop positive attitudes toward school/learning'' and ''an increased percentage of students develop higher levels of self-confidence.''

Discussion: These characteristics are usually associated with sustained mentoring matches and improvements in academic achievement; therefore, we do not think it necessary to include them as specific elements within the performance measures.

Change: None.

Comment: One commenter recommended developing optional GPRA measures for all seven of the statutory goals for the Mentoring Program in addition to the three established core GPRA measures. The commenter also recommended that we award bonus points to programs seeking to address the additional statutory goals.

Discussion: We have established GPRA performance measures that we believe are aligned with what will be typical for most grants, and that will help determine program effectiveness in terms of outcomes. For the Department to be able to report on GPRA measures for this program, grantees must use the same performance measures, and data must be consistently collected and reported across program sites. Offering ''optional'' performance measures would likely prevent this.

Additionally, evaluating a program that potentially addresses all seven statutory goals is likely to require an extremely complex and rigorous design, which may be very difficult for certain applicants to accomplish, particularly those with limited experience. We do not believe that this is in the best interests of the program. It is not Departmental policy to award ''bonus'' points; however, this year we are proposing one competitive preference priority under which we will award five additional points to a consortium of eligible applicants, which we believe will be more beneficial as it is likely to result in more diverse and effective programs.

Change: None.

Selection Criteria

Several commenters proposed changes to the selection criteria and/or the points assigned to each scoring factor. The suggestions are grouped according to the specific selection criterion addressed.

Need for the Project

Comment: One commenter recommended that this criterion include, among the students to be served by the project, a focus on students with a history of behavioral and/or academic problems in school.

Discussion: The criterion as drafted is sufficiently broad to permit applicants to discuss behavioral and/or academic problems in school as part of their discussion of the need for the project.

Change: None.

Comment: One commenter recommended increasing to 40 the number of points awarded for need for the project, and awarding remaining points to the other criteria as follows: Quality of the Program Design, 20 points; Quality of the Management Plan, 20 points; Quality of Project Evaluation, 10 points, and Quality of Project Personnel, 10 points. The commenter believes that those communities with the greatest need ought to have the greatest opportunity to receive the benefits of the proposed projects.

Discussion: As with any prevention strategy, mentoring is most effective when programs are based on proven strategies and practice. At a minimum, a well-designed mentoring program should provide clear goals and objectives, as well as strong policies and procedures for the management of all program operations, including volunteer screening, structured activities for mentors and youth, and ongoing training and supervision for all matches. Revising the

point values for the selection criteria in the manner recommended would make these critical factors less important in selecting grantees. We believe that it is appropriate to stress the importance of quality program design and management.

Change: None.

Quality of the Project Design

Comment: One commenter recommended having mentors available to students throughout the school day.

Discussion: Applicants are free to propose a level of mentoring services that meets the needs of the students they will serve.

Change: None.

Comment: One commenter recommended moving scoring factors (2)(a) and 2(c) out of Quality of the Project Design and into Quality of the Management Plan, and giving 30 points to the remaining factor 2(b).

Discussion: Scoring factors (2)(a) and (2)(c) are important components of program design and should remain under that heading. They are intended to emphasize the important role each plays in the development of an effective mentoring program.

Change: None.

Comment: One commenter recommended allowing mentoring programs to build to full capacity of mentees over a period of time. Such flexibility would, according to the commenter, permit building a core group of mentees who could assist in introducing other young people to the program.

Discussion: Applicants may propose to phase in the number of mentoring matches over the three-year life of the project.

Change: None.

Comment: One commenter recommended that applicants be required to cite the literature, models, and other program materials used in the development of project design. Another commenter recommended that the selection criteria be expanded to give value to innovative approaches based on new research findings.

Discussion: We agree that a thoughtful conceptual design is important to project success. We have added a scoring factor to the Quality of the Project Design criterion.

Change: We added the following scoring factor to this criterion: The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature (including new research), a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives. (10 points)

The overall point value for this criterion will remain 30 points. To accommodate the additional scoring factor, we have revised the point values for 2(b) and 2(c) from 10 points each to 5 points each.

Comment: One commenter recommended revising this criterion to include the development and maintenance of a program advisory board.

Discussion: We believe that this criterion sufficiently addresses the involvement of parents, teachers, and other community organizations in program implementation. We do not believe that revising the criterion to require the development of an advisory board would materially improve this measure.

Change: None.

Quality of Management Plan

Comment: One commenter recommended that criterion 3(d) be revised to include the phrase ''based on the needs of the children.''

Discussion: We believe that this criterion already addresses the extent to which there is a comprehensive plan to match mentors with students, based on the needs of the children.

Change: None.

Comment: One commenter recommended that mentor reference checks include at least one reference from a known community organization or a respected community member.

Discussion: The guidelines for mentor reference checks are minimum requirements directed by the statute. Applicants may propose checks that exceed the minimum, including references from community members or organizations.

Change: None.

Comment: One commenter recommended that we revise the selection criteria to include group mentoring. The commenter believes that a team rather than an individual may sometimes be the best mentor for a child.

Discussion: The authorizing statute calls for one-to-one mentoring relationships, where practicable.

Change: None.

Comment: One commenter recommended that we clearly articulate the requirement for grantees to develop a written policy and procedure manual to guide staff work under their project.

Discussion: The approved grant application, the statute authorizing the program, and applicable regulations govern the conduct of the grant project. Therefore, the proposed policy and procedure manual is not crucial for operation of the program. However, applicants are strongly encouraged to develop written policies and procedures to document how they will carry out their project.

Change: None.

Comment: One commenter recommended that applicants be required to identify clearly the topics to be included in the training provided to mentors, including specific training components that will support academic requirements.

Discussion: Applicants may discuss training topics in relevant sections of their grant application. We intend to provide national training to grantees in order to ensure broad coverage of topics and consistent content.

Change: None.

Comments: One commenter recommended that applicants be required to outline the following: (a) Proposed representative mentor/mentee activities; (b) the balance of school site-based activities versus community-based activities, and (c) how the applicant will bridge gaps in the school year calendar in order to facilitate matches that last 12 or more months.

Discussion: We agree that these are important elements of mentoring projects, and we think that a comprehensive, thorough response to the scoring criteria will elicit this information.

Change: None.

Comment: One commenter recommended that applicants be required to outline initial plans for sustaining the project past the three years of Federal funding.

Discussion: We agree that sustainability is an important consideration. However, rather than assess a potential sustainability plan that may be speculative at best, we believe that it will be more beneficial to work directly with each grantee funded under this program on sustainability as well as on other issues, as a part of the overall training and technical assistance that we will provide.

Change: None.

Quality of Project Personnel

Comment: One commenter recommended that we require the submission of job descriptions for the program coordinators and other key program staff.

Discussion: Resumes, when they are available, demonstrate the skills and experience of key personnel the applicant has available to help implement the project. Job descriptions, on the other hand, indicate the skills and experience the applicant thinks are needed and hopes to acquire. This speculative aspect to job descriptions makes them a less useful tool for assessing the quality of project personnel.

Change: None.

Quality of the Project Evaluation

Comment: One commenter recommended that applicants be required to provide a standard for quality communication between program coordinators and parents, and to include a ''Satisfaction Inventory'' for participants and parents.

Discussion: The selection criteria are sufficiently broad to permit applicants to use a variety of methods, including satisfaction inventories, as part of their evaluation. We do not think such inventories should be required, because they are measures of how well participants liked the program and not measures of how effective the program is in achieving the established performance objectives established.

Change: None.

Comments: One commenter recommended augmenting local program evaluation through the adoption or adaptation of existing data collection tools to ensure the comparability and generalizability of outcome data across programs. The commenter also recommended that we give consideration to developing a national evaluation framework and provide guidance for implementing the framework locally.

Discussion: We intend to provide technical assistance to grantees on evaluation as well as on other topics throughout the life of the grants.

Change: None.

Use of Funds

Comment: One commenter encouraged flexibility in recompense for mentors, recognizing that not all suitable mentors have the funds to support mentoring activities.

Discussion: The authorizing statute prohibits direct compensation of mentors. Applicants, however, may request funds to pay for allowable activities for the mentors and the children being mentored as part of

the mentoring program. These funds must remain under the administrative control of the grantee.

Change: None.

[FR Doc. 04–12208 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Mentoring Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184B.

Dates: Applications Available: May 28, 2004.

Deadline for Transmittal of Applications: July 7, 2004.

Deadline for Intergovernmental Review: June 28, 2004.

Eligible Applicants: (1) Local educational agencies (LEAs); (2) nonprofit, community-based organizations (CBOs), which may include faith-based organizations; and (3) a partnership between an LEA and a CBO.

Estimated Available Funds: $29,375,000. Contingent upon the availability of funds, we may make additional awards in FY 2005 and subsequent years from the rank-ordered list of unfunded applications from this competition.

Estimated Number of Awards: 195.

Estimated Range of Awards: $100,000–$200,000.

Estimated Average Size of Awards: $150,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides assistance to promote mentoring programs for children with greatest need that: (1) Assist these children in receiving support and guidance from a mentor; (2) improve the academic performance of the children; (3) improve interpersonal relationships between the children and their peers, teachers, other adults, and family members; (4) reduce the dropout rate of the children; and (5) reduce juvenile delinquency and involvement in gangs by the children.

Priorities: The following absolute and competitive preference priorities are from the notice of final priorities, requirements, and selection criteria for this program published elsewhere in this issue of the **Federal Register**. These priorities are for the FY 2004 grant competition and any future awards made on the basis of the funding slate from this competition.

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority supports projects that address the academic and social needs of children with the greatest need through school-based mentoring programs and activities and provide these students with mentors. These programs and activities must serve children with the greatest need in one or more grades 4 through 8 living in rural areas, high-crime areas, or troubled home environments, or who attend schools with violence problems.

Competitive Preference Priority

Within this absolute priority, we give competitive preference to applications that address the following priority.

Under 34 CFR 75.105(c)(2)(i) we will award an additional five points to an application that meets this priority.

This priority is for applications proposing a consortium of eligible applicants that includes either: (a) At least one LEA and at least one CBO that is not a school and that provides services to youth and families in the community; or (b) at least one private school that qualifies as a nonprofit CBO and at least one other CBO that is not a school and that provides services to youth and families in the community.

The consortium must designate one member of the group to apply for the grant, unless the consortium is itself eligible as a partnership between a LEA and a nonprofit CBO. To receive this competitive preference, the applicant must clearly identify the agencies that comprise the consortium and must include a detailed plan of their working relationship and of the activities that each member will perform, including a project budget that reflects the contractual disbursements to the members of the consortium. For the purpose of this priority, a ''consortium'' means a group application in accordance with the provisions of 34 CFR 75.127 through 75.129.

Program Authority: 20 U.S.C. 7140.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99 and 299. (b) the notice of final priorities, requirements, and selection criteria for this program as published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $29,375,000. Contingent upon the availability of funds, we may make additional awards in FY 2005 and subsequent years from the rank-ordered list of unfunded applications from this competition.

Estimated Range of Awards: $100,000–$200,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 195.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) LEAs; (2) CBOs, which may include faith-based organizations; and (3) a partnership between an LEA and a CBO.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:*

(a) To be eligible for funding, each applicant must include in its application an assurance that it will: (1) Establish clear, measurable performance goals; and (2) collect and report to the Department data related to the established Government Performance and Results Act (GPRA) performance measures for the Mentoring Programs grant competition. We will reject any application that does not contain this assurance.

(b) To be eligible for funding, each community-based organization is also required to provide an assurance that: (a) It is an eligible applicant under the definitions provided in the application package; (b) timely and meaningful consultation with an LEA or private school has taken place during the design and/or development of the proposed program; (c) LEA or private school staff will participate in the identification and referral of students to the CBO's proposed program; and (d) the LEA or private school will participate in the collection of data related to the established GPRA performance measures for the Mentoring Programs grant competition.

Equitable Participation by Private School Children and Teachers

LEAs are required to provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools

located in areas served by the grant recipient.

In order to ensure that grant program activities address the needs of private school children, the LEA must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, the LEA must consult with private school officials on issues such as: how children's needs will be identified; what services will be offered; how and where the services will be provided; who will provide the services; how the services will be assessed and how the results of assessment will be used to improve those services; the amount of funds available for services; the size and scope of the services to be provided; how and when decisions about the delivery of services will be made; and the provision of contract services through potential third-party providers.

See Section 9501 of the Elementary and Secondary Education Act of 1965, as reauthorized by the No Child Left Behind Act of 2001.

Maintenance of Effort

An LEA may receive a grant under the Mentoring Programs grant competition only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

IV. Application Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements and definitions concerning the content of an application are in the notice of final priorities published elsewhere in this issue of the **Federal Register**. Additional requirements, together with the forms you must submit, are in the application package for this program.

Page Limit: The program narrative section should not exceed 25 double-spaced pages using a standard font no smaller than 12-pt, with 1-inch margins (top, bottom, left, and right). The narrative should follow the format and sequence of the selection criteria.

3. *Submission Dates and Times:*

Applications Available: May 28, 2004.

Deadline for Transmittal of Applications: July 7, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 28, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Grant funds may not be used to (1) directly compensate mentors; (2) obtain educational or other materials or equipment that would otherwise be used in the ordinary course of the grantee's operations; or (3) support litigation of any kind. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications:

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Mentoring Programs—CFDA Number 84.184B is one of the programs included in the pilot project. If you are an applicant under Mentoring Programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- 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 the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for Mentoring Programs competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or (b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contacts) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Mentoring Programs competition at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are: (1) The geographic distribution of the projects, including urban and rural locations, in addition to the rank order of applicants; and (2) to the extent practicable, we will select not less than one grant recipient from each State for which there is an eligible entity that submits an application of sufficient quality.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. We may also require more frequent performance reports.

4. *Performance Measures:* We have identified the following key GPRA performance measures for assessing the effectiveness of this program: (1) The percentage of student/mentor matches that are sustained for a period of twelve months will increase; (2) The percentage of mentored students who demonstrate improvement in core academic subjects as measured by grade point average after 12 months will increase; and (3) The percentage of mentored students who have unexcused absences from school will decrease. To be eligible for funding, each applicant must include in its application an assurance that it will collect and report to the Department data related to the GPRA performance measures for the Mentoring Program.

VII. Agency Contacts

For Further Information Contact: Earl Myers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E254, Washington, DC 20202–6450. Telephone: (202) 708–8846. Email address: *earl.myers@ed.gov.*

Bryan Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202–6123. Telephone: (202) 260–2391. Email address: *bryan.williams@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in this section.

VIII. Other Information

Electronic Access To This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/dvpmentoring/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 26, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–12209 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Friday,
May 28, 2004

Part VII

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notices

DEPARTMENT OF EDUCATION

RIN 1820 ZA33

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority (NFP) for Rehabilitation Engineering Research Centers (RERC) program.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority under the National Institute on Disability and Rehabilitation Research (NIDRR) Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERC) program for fiscal year (FY) 2004 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This final priority is effective June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7313.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Rehabilitation Engineering Research Centers Program

Under the RERC program, we may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This funding supports research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. Each RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization. Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/RERC.*

General Requirements of Rehabilitation Engineering Research Centers

RERCs shall carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits;
- Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities;
- Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities; and
- Providing training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. During the funding cycle of any RERC, NIDRR will conduct one or more reviews of the activities and achievements of the RERC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on February 27, 2004 (69 FR 9307). The NPP included a background statement for this priority at 69 FR 9308. This NFP contains one change from the NPP. We discuss this change in the Analysis of Comments and Changes section published as an appendix to this notice.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice published in the **Federal Register**. When inviting applications, we designate the priority as absolute, competitive preference, or invitational.

The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the absolute priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/.*

This final priority is in concert with NIDRR's Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under this priority, a specific reference is included for each of the priority topics presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations;

(3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priority

The Assistant Secretary announces a final priority for the funding of RERCs that will focus on innovative technological solutions; new knowledge; and concepts to promote the health, safety, independence, active engagement in daily activities, and quality of life of persons with disabilities. Applicants must select one of the following priority topic areas: (a) Universal Design and the Built Environment; (b) Telecommunications Access; (c) Telerehabilitation; and (d) Cognitive Technologies.

Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Under each of the priority topics the RERC must—

(1) Contribute substantially to the technical and scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its respective subject area;

(3) Identify, implement, and evaluate, in collaboration with the relevant industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in its respective field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in its respective area of research; and

(5) Provide technical assistance to public and private organizations, persons with disabilities, and employers on policies, guidelines, and standards that affect its respective area of research.

In addition, the following requirements apply to each of the priority topics:

- Each RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. Each RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Each RERC must develop and implement in the first three months of the grant a plan that describes how the center will include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation;
- Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, employers, and other interested parties;
- Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace;
- Each RERC must conduct a state-of-the-science conference on its respective area of research in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant; and
- Each RERC must coordinate with research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Each RERC must focus on one of the following priority topic areas:

(a) *Universal Design and the Built Environment:* This RERC must research, develop, and evaluate strategies and devices that will advance the field of universal design and assist designers, builders, and manufacturers with incorporating universal design in their products and buildings. This RERC also must research, develop and evaluate methods and strategies that improve upon and expand current anthropometric data collection practices and databases, both static and dynamic (functional), pertaining to persons with disabilities. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Systems Technology: Universal Design and Accessibility.

(b) *Telecommunications Access:* This RERC must research and develop technological solutions to promote universal access to telecommunications systems and products including strategies for integrating current accessibility features into newer generations of telecommunications systems and products. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Research to Improve Accessibility of Telecommunications and Information Technology.

(c) *Telerehabilitation:* This RERC must research and develop methods, systems, and technologies that support remote delivery of rehabilitation and home health care services for individuals who have limited local access to comprehensive medical and rehabilitation outpatient services. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Research to Improve Accessibility of Telecommunications and Information Technology.

(d) *Cognitive Technologies:* This RERC must research, develop, and evaluate innovative technologies and approaches that will improve the ability of individuals with significant cognitive disabilities to function independently within their communities and workplaces. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Research on Technology to Enhance Cognitive Function.

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, we have determined that the benefits of the final priority justify the costs.

Summary of potential costs and benefits: The potential costs associated with this final priority are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RERC program have been well established over the years. Similar projects have generated new knowledge and technologies.

The benefit of this final priority will be the establishment of new RERCs, which can be expected to develop technological solutions that will improve the lives of persons with disabilities and to contribute substantially to the technical and scientific knowledge-base in the topic areas.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: May 26, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

In response to our invitation in the NPP, we received 10 comments. An analysis of the comments and of the changes in the priority since publication of the NPP follows.

Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

Comments: One commenter believes the target audience for the Universal Design and the Built Environment topic area should be expanded beyond architects and interior designers to include consumer product and package designers.

Discussion: An applicant may propose activities that include consumer product and package designers. The peer review process will be used to evaluate the merits of the proposal. However, NIDRR has no basis for requiring that all applicants include consumer product and package designers in their activities.

Changes: None.

Comments: One commenter believes the Universal Design and the Built Environment topic area should require applicants to research, develop, and evaluate innovative ways to present anthropometric data so that designers are more likely to incorporate the information into their designs.

Discussion: An applicant may propose activities that include innovative ways to present anthropometric data. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring that all applicants include these activities.

Changes: None.

Comments: One commenter states that persons with cognitive disabilities have been underserved by the universal design community and believes the Universal Design and the Built Environment topic area should require applicants to include the design needs of persons with cognitive disabilities in their research and development projects.

Discussion: The general concept behind universal design is to design products and environments to be usable by all people, to the greatest extent possible, without the need for adaptations or special design. NIDRR expects this RERC to follow the Principles of Universal Design and to include as many populations as possible, including persons with cognitive disabilities in their research and development projects. NIDRR agrees with the commenter that the universal design community has been slow to include the design needs of persons with cognitive disabilities. However, NIDRR has no basis to require all applicants to identify persons with cognitive disabilities as a target population for their respective research and development projects. An applicant may propose this activity and the peer review process will be used to evaluate the merits of the proposal.

Changes: None.

Comments: One commenter asked for clarification regarding the Universal Design and the Built Environment topic area requirement to improve upon and expand current anthropometric data collection practices and databases. The commenter wanted to know whether NIDRR is simply looking to expand the database of reach ranges or whether it is interested in collecting other anthropometric data that can be used as a tool for designers of the built environment.

Discussion: NIDRR believes that in addition to creating a database of reach ranges, there are many needs in the area of anthropometry for persons with disabilities. An applicant could propose activities that include collecting other types of anthropometric data that can be used by designers and architects. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comments: Two commenters believe applicants responding to the Cognitive Technologies topic area should be required to consider incorporating the principles of universal design in their research and development projects.

Discussion: An applicant could propose activities that incorporate the principles of universal design. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis to determine that all applicants should be required to incorporate the principles of universal design into all their activities.

Changes: None.

Comments: One commenter believes that applicants responding to the Cognitive Technologies topic area should be required to develop simple and effective tools for applying clinical and technical knowledge about diverse cognitive disabilities.

Discussion: An applicant could propose activities that include development of simple and effective tools for applying clinical and technical knowledge about diverse cognitive disabilities. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring that all applicants include these activities.

Changes: None.

Comments: One commenter believes a RERC on Cognitive Technologies must employ personnel with the requisite skills and knowledge to understand the need for and, as appropriate, develop individualized solutions for persons with cognitive disabilities.

Discussion: An applicant may propose activities that address the need for and, as appropriate, develop individualized solutions for persons with cognitive disabilities. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring that all applicants propose these activities.

Changes: None.

Comments: One commenter believes that the RERC on Cognitive Technologies should disseminate RERC findings and information through the National Resource Center for Traumatic Brain Injury.

Discussion: All RERCs are required to develop a dissemination plan within the first year of their funding cycle. An applicant may propose a plan to disseminate RERC findings and information through the National Resource Center for Traumatic Brain Injury. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis to determine that all applicants should be required to disseminate findings through this group.

Changes: None.

Comments: One commenter believes that people with cognitive disabilities should be involved in the research and design of a RERC on Cognitive Technologies. However, communication problems and difficulty with memory and thought organization experienced by many people with cognitive disabilities will require investigators to explore new methods for participatory research.

Discussion: All RERCs are required to develop and implement in the first three months of their funding cycle a plan to include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation.

Changes: None.

Comments: One commenter noted that the Telecommunications Access topic area included a requirement to provide technical assistance to public and private organizations, persons with disabilities, and employers on policies, guidelines, and standards that affect the accessibility of telecommunications technology products and systems. The commenter stated that this requirement should be mandatory for all RERCs and not just the one that focuses on Telecommunications Access.

Discussion: NIDRR agrees with the commenter that every RERC should provide technical assistance to public and private organizations, persons with disabilities, and employers on policies, guidelines, and standards that affect their respective areas of research.

Changes: The fifth required activity for a RERC under each of the priority topics has been changed so that it reads: ''Provide technical assistance to public and private organizations, persons with disabilities, and employers on policies, guidelines, and standards that affect its respective area of research.'' The final priority topic area, Telecommunications Access, has been modified to reflect this change by removing the second sentence.

Comments: One commenter suggested that there are both off-the-shelf and emerging technologies that have not been explored and that RERCs would benefit from looking to these technologies prior to proposing new, but similar, research and development projects.

Discussion: An applicant may propose activities that mine existing off-the-shelf and emerging technologies. The peer review process will be used to evaluate the merits of the proposal. However, NIDRR has no basis for requiring that all applicants propose these activities.

Changes: None.

Comments: Several commenters expressed concerns that research on the built environment and anthropometric data collection and databases represent distinct areas that should be addressed in separate priorities. These commenters believed that research on the built environment is not being addressed adequately through other current NIDRR projects and that including anthropometric research diverts attention from the built environment.

Discussion: NIDRR believes that the two topics are closely linked and therefore should be included under one RERC. An applicant could propose more activity on the built environment and less on anthropometric research as long as requirements that both topic areas are addressed are met. The peer review process will be used to evaluate the merits of the proposal.

Changes: None.

[FR Doc. 04–12252 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Engineering Research Centers (RERC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–1.

Dates: Applications Available: May 28, 2004.

Deadline for Notice of Intent to Apply: June 28, 2004.

Deadline for Transmittal of Applications: July 27, 2004.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $2,550,000.

Estimated Range of Awards: $835,000–$850,000.

Estimated Average Size of Awards: $850,000.

Maximum Award: We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Act). For FY 2004, the competition for new awards focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Applicants must select one of the following priority topic areas: (a) Universal Design and the Built Environment; (b) Telecommunications Access; (c) Telerehabilitation; and (d) Cognitive Technologies. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97, (b) the regulations for this program in 34 CFR part 350, and (c) the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,550,000.

Estimated Range of Awards: $835,000–$850,000.

Estimated Average Size of Awards: $850,000.

Maximum Award: We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via the Internet or from the ED Publications Center (ED Pubs). To obtain a copy via the Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this

competition as follows: CFDA Number 84.133E–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: Due to the open nature of the RERC competition, and to assist with the selection of reviewers for this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). While the submission is mandatory, the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application. We will notify only those potential applicants who have failed to submit an LOI that meets the requirements listed below.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, which priority topic will be addressed, the name of the company, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a LOI is a prerequisite for eligibility to submit an application.

NIDRR will accept a LOI via surface mail, e-mail, or facsimile by June 28, 2004. The LOI must be sent to: Surface mail: William Peterson, U.S. Department of Education, 550 12th Street, SW., room 6070, Potomac Center Plaza, Washington, DC 20202; or fax (202) 205–8515; or e-mail: *william.peterson@ed.gov.*

If a LOI is submitted via e-mail or facsimile, the applicant must provide NIDRR with the original signed LOI within seven days after the date the e-mail or facsimile is submitted.

For further information regarding the LOI requirement contact William Peterson at (202) 245–7477.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* May 28, 2004. *Deadline for Notice of Intent to Apply:* June 28, 2004. *Deadline for Transmittal of Applications:* July 27, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Engineering Research Centers Program competition—CFDA Number 84.133E–1 is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Engineering Research Centers Program competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- 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 the

Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Rehabilitation Engineering Research Centers Program competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Engineering Research Centers Program competition at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in 34 CFR 75.210 of EDGAR and 34 CFR 350.54. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

• The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods or both are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field;

• The number of new or improved tools, instruments, protocols, and technologies developed and published by grantees that are deemed to improve the measurement of disability and rehabilitation-related concepts and to contribute to changes and improvements in policy, practice, and outcomes for individuals with disabilities and their families;

• The percentage of grantees deemed to be implementing a systematic outcomes-oriented dissemination plan, with measurable performance goals and targets, that clearly identifies the types of products and services to be produced and the target audiences to be reached, and describes how dissemination products and strategies will be used to meet the needs of end-users, including individuals with disabilities and those from diverse backgrounds, and promotes the awareness and use of information and findings or both from NIDRR-funded projects;

• The percentage of consumer-oriented dissemination products and services (based on a subset of products and services nominated by grantees to be their ''best'' outputs) that are deemed to be of high-quality and contributing to advances in knowledge and to changes and improvements or both in policy, practices, services, and supports by individuals with disabilities and other end-users, including practitioners, service providers, and policy makers; and

• The percentage of new studies funded each year that assess the effectiveness of interventions or demonstration programs using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APR) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

The Department is program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/offices/OUS/PES/planning.html.*

Updates on the Government Performance and Results Act (GPRA) indicators, revisions, and methods appear in the NIDRR Program Review Web site: *http://www.cessi.net/pr/grc/index.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the

Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Dated: May 26, 2004.

Troy R. Justesen,

Acting Deputy Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–12253 Filed 5–27–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
May 28, 2004

Part VIII

The President

Proclamation 7791—Prayer for Peace, Memorial Day, 2004

Federal Register
Vol. 69, No. 104
Friday, May 28, 2004

Presidential Documents

Title 3—

The President

Proclamation 7791 of May 26, 2004

Prayer for Peace, Memorial Day, 2004

By the President of the United States of America

A Proclamation

For more than two centuries, Americans have been called to defend the founding ideals of our democracy. On Memorial Day, a grateful Nation remembers the proud patriots who made the ultimate sacrifice in defense of liberty's blessings.

From the opening battles of the American Revolution through the turmoil of the Civil War, to World War I, World War II, Korea, and Vietnam, to the Persian Gulf and today's operations in the war on terror in Afghanistan, Iraq, and around the world, the members of our military have built a tradition of honorable and faithful service. As we observe Memorial Day, we remember the more than one million Americans who have died to preserve our freedom, the more than 140,000 citizens who were prisoners of war, and all those who were declared missing in action. We also honor our veterans for their dedication to America and their sacrifice.

This year, we honor many heroes by observing the 60th anniversary of D-Day on the beaches of Normandy, and by dedicating the National World War II Memorial in Washington, D.C. In a radio address on June 6, 1944, President Franklin Roosevelt described these service members as the ''pride of our Nation,'' who struggled to preserve our civilization. The fallen from that fateful day and that war will always be remembered. They hold a cherished place in the history of the United States and in the memories of the people they liberated.

Today, all who wear the uniform of the United States are serving at a crucial hour in history, and each has answered a great call to serve our Nation on the front lines of freedom. As we continue to fight terrorism and promote peace and freedom, let us pray for the safety and strength of our troops, for God's blessing on them and their families, and for those who have lost loved ones.

On this Memorial Day, we honor all of our fallen soldiers, their commitment to our country, and their legacy of patriotism and sacrifice. By giving their lives in the cause of freedom, these heroes have protected and inspired all Americans.

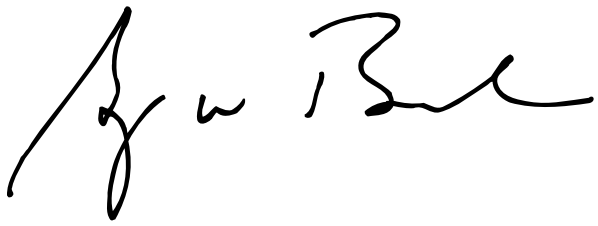
In respect for their devotion to America, the Congress, by a joint resolution approved on May 11, 1950, as amended (64 Stat. 158), has requested the President to issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated the minute beginning at 3:00 p.m. local time on that day as a time for all Americans to observe the National Moment of Remembrance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Memorial Day, May 31, 2004, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to unite in prayer. I also ask all Americans to observe the National Moment of Remembrance beginning

at 3:00 p.m. local time on Memorial Day. I urge the press, radio, television, and all other media to participate in these observances.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States, and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth 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.



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Filed 5–27–04; 11:22 am]
Billing code 3195–01–P

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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. 2315/P.L. 108–228

To amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering. (May 18, 2004; 118 Stat. 644)

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