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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

Federal Register

Vol. 69, No. 204

Friday, October 22, 2004



## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

### Final Regulatory Changes Designating the Dallas Field Office as the Dallas Regional Office

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or Board) is amending Appendix II and Appendix III of this part to rename the Dallas Field Office as the Dallas Regional Office. This change is being made to eliminate an unnecessary layer of supervision and achieve parity with other regional offices in the supervision of the administrative judges and support staff. This change will better reflect the actual workload and size of the Board's Dallas office.

**EFFECTIVE DATE:** October 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Timothy L. Korb, Information Services, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; e-mail: *mspb@mspb.gov*.

**SUPPLEMENTARY INFORMATION:** The Board is amending Appendix II and Appendix III of this part to rename the Dallas Field Office as the Dallas Regional Office. This change is being made to better reflect the actual status of the office. Specifically, the workload, at 821 case receipts in fiscal year 2003, was similar to that of the regional offices, and well in excess of that of the other field offices. In fact, this has been the trend in all fiscal years since 1999. Further, the staffing level of the office is comparable to that of the regional offices, and again, greater than that of the other field offices. This, too, has consistently been the case in recent years. Finally, the Dallas office, alone among the current field offices, was a Regional Office even after the Board created a field office structure, and lost that designation only as a result of the retirement of the Regional Director.

The Board is publishing this rule as a final rule pursuant to 5 CFR part 1201.

**List of Subjects in Part 1201**

Administrative Practice and Procedure.

### PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

**Appendix II [Amended]**

■ 2. Amend Appendix II to Part 1201 at paragraph 2a by removing the word ''Field'' and adding in its place the word ''Regional,'' and redesignating paragaph 2a as paragraph 6.

**Appendix III [Amended]**

■ 3. Amend Appendix III to Part 1201 by removing the term ''Dallas Field Office'' and by adding in its place ''Dallas Regional Office''.

Dated: October 18, 2004.

**Bentley M. Roberts, Jr.,**

*Clerk of the Board.*

[FR Doc. 04–23644 Filed 10–21–04; 8:45 am]

BILLING CODE 7400–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM292, Special Conditions No. 25–275–SC]**

### Special Conditions: Dassault-Breguet Model Falcon 10 Airplanes; High Intensity Radiated Fields (HIRF)

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

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

**SUMMARY:** These special conditions are issued for Dassault-Breguet Model Falcon 10 airplanes modified by Flight Test Associates Incorporated, of Mojave, California. The modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of Honeywell Model AM–250 Altimeters. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is October 22, 2004. Comments must be received on or before November 22, 2004.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM292, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM292.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA has determined that notice and opportunity for prior public comment is impracticable, because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions, based on the comments received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

## Background

On June 10, 2004, Flight Test Associates Incorporated, of Mojave, California, applied to the FAA, Los Angeles Aircraft Certification Office, for a supplemental type certificate (STC) to modify Dassault-Breguet Model Falcon 10 airplanes. The proposed modification incorporates the installation of digital Honeywell Model AM–250 Barometric Altimeters as primary altimeters. These digital altimeters would perform critical functions, that is functions whose failure would prevent the continued safe flight and landing of the airplane. The digital altimeters to be installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

## Type Certification Basis

Under the provisions of 14 CFR 21.101, Flight Test Associates must show that the Model Falcon 10 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ‘‘original type certification basis.’’

The regulations incorporated by reference in Type Certificate No. A33EU include 14 CFR part 25, as amended by Amendments 25–1 through 25–20.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the modified Dassault-Breguet Model Falcon 10 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 10 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Flight Test Associates apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A33EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

## Novel or Unusual Design Features

The Dassault-Breguet Model Falcon 10 airplanes modified by Flight Test Associates Incorporated will incorporate new dual primary altimeters that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

## Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault-Breguet Model Falcon 10 airplanes modified by Flight Test Associates Incorporated. These special conditions require that new primary altimeters that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

## High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

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

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to Dassault-Breguet Model Falcon 10 airplanes modified by Flight Test Associates Incorporated. Should Flight Test Associates Incorporated apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A33EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of 14 CFR 21.101.

**Conclusion**

This action affects only certain novel or unusual design features on Dassault-Breguet Model Falcon 10 airplanes modified by Flight Test Associates Incorporated. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplane.

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

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and record keeping requirements.

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Dassault-Breguet Model Falcon 10 airplanes modified by Flight Test Associates Incorporated:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

*Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 14, 2004.

**Kalene C. Yanamura,**

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

[FR Doc. 04–23668 Filed 10–21–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2004–19118; Directorate Identifier 2004–CE–25–AD; Amendment 39–13826; AD 2004–21–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Kelly Aerospace Power Systems B-Series Combustion Heaters Models B1500, B2030, B2500, B3040, B3500, B4050, and B4500 (Formerly Owned by JanAero Devices, Janitrol, C&D, FL Aerospace, and Midland-Ross Corporation)

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

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

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 96–20–07, which applies to certain B-Series Combustion Heaters Models B1500, B2030, B3040, and B4050 that are installed on airplanes. AD 96–20–07 currently requires you to repetitively test (pressure decay) the combustion tube and overhaul any heater that does not pass any test. AD 96–20–07 also requires you to repetitively test the operation of the combustion air pressure switch and replace any combustion pressure switch that does not pass one of the tests. As a terminating action for the repetitive test requirements of AD 96–20–07, you could install a new ceramic-coated combustion tube and an improved design combustion air pressure switch. This AD is the result of reports that the new ceramic-coated combustion tubes are subject to the same distress as the non-ceramic coated combustion tubes. Consequently, this AD retains the repetitive testing requirements of AD 96–20–07, removes the terminating action for the combustion tube, and adds Models B2500, B3500, and B4500 to the applicability section. We are issuing this AD to prevent combustion by-products (carbon-monoxide exhaust) and fuel leakage from the combustion heaters caused by failure of the combustion heater system. This failure could result in fire or explosion in the airplane and possible carbon monoxide poisoning of the crew and passengers in the cabin.

**DATES:** This AD becomes effective on November 19, 2004.

On November 14, 1996 (61 FR 51357, October 2, 1996), the Director of the Federal Register approved the incorporation by reference of JanAero Devices Service Bulletin # A–103, dated September 1995.

We must receive any comments on this AD by December 20, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site*: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail*: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax*: 1–202–493–2251.
- *Hand Delivery*: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Kelly Aerospace Power Systems, P.O. Box 273, Fort Deposit, Alabama 36032; telephone: (334) 227–8306; facsimile: (334) 227–8596; Internet: *http://www.kellyaerospace.com*.

To view the comments to this AD, go to *http://dms.dot.gov*. The docket number is FAA–2004–19118.

**FOR FURTHER INFORMATION CONTACT:** Kevin L. Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6063; facsimile: (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

*Has FAA taken any action to this point*? Repeated reports of failures of the affected heaters prompted us to issue AD 96–20–07, Amendment 39–9773 (61 FR 51357, October 2, 1996). AD 96–20–07 applies to JanAero Devices B-Series Combustion Heaters, Models B1500, B2030, B3040, and B4050 (formerly owned by Janitrol, C&D, FL Aerospace, and Midland-Ross Corporation), marked as meeting the standards of TSO–C20, that do not incorporate a ceramic combustion tube and a combustion air pressure switch, part number (P/N) 94E42, that are installed on airplanes. AD 96–20–07 currently requires the following:

- Repetitively inspecting (pressure decay test) the combustion tube of the heater;
- Overhauling the heater and replacing the combustion tube with a serviceable tube or replacing the heater assembly if the heater fails any of these tests;
- Repetitively testing the operation of the combustion air pressure switch; and
- Replacing the switch with one of the same design or with one of improved design, P/N 94E42, if the combustion air pressure switch fails any of these tests.

Replacing the heater assembly with a new or rebuilt heater assembly that incorporates a ceramic combustion tube terminates the repetitive inspection requirements.

Replacing the combustion air pressure switch with a P/N 94E42 switch terminates the repetitive operational test requirements.

As an alternative method of compliance to AD 96–20–07, you may disable the heater.

B-Series Combustion Heaters, Models B2500, B3500, and B4500 were exempt from AD 96–20–07 because they incorporated a ceramic-coated combustion tube and a new combustion air pressure switch, P/N 94E42.

You must do the actions in AD 96–20–07 following JanAero Devices Service Bulletin # A–103, dated September 1995.

*What has happened since AD 96–20–07 to initiate this action*? We have received reports that the ceramic-coated combustion tubes are subject to some of the same distress noted in the non-ceramic coated combustion tubes. The ceramic-coated combustion tubes were incorporated as a product improvement in AD 96–20–07 as a terminating action for the repetitive pressure decay.

*What is the potential impact if FAA took no action*? If not detected and corrected, failure of the combustion heaters could cause combustion by-products (carbon-monoxide exhaust) and fuel to leak. This failure could result in fire or explosion in the airplane and possible carbon monoxide poisoning of the crew and passengers in the cabin.

**FAA's Determination and Requirements of the AD**

*What has FAA decided*? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other airplanes that have certain B-Series Combustion Heaters Models B1500, B2030, B2500, B3040, B3500, B4050, and B4500 installed, we are issuing this AD to prevent combustion by-products (carbon-monoxide exhaust) and fuel leakage from the combustion heaters caused by failure of the combustion heater system. This failure could result in fire or explosion in the airplane and possible carbon monoxide poisoning of the crew and passengers in the cabin.

*What does this AD require*? This AD supersedes AD 96–20–07 with a new AD that retains the repetitive pressure decay test of the combustion tube and the repetitive operational test of the combustion air pressure switch from AD 96–20–07. This AD also removes the terminating action for the repetitive testing requirements of the combustion tube and adds B-Series Combustion Heaters, Models B2500, B3500, and B4500 to the applicability section.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

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

**Comments Invited**

*Will I have the opportunity to comment before you issue the rule*? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19118; Directorate Identifier 2004–CE–25–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a non-written communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

**Regulatory Findings**

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–19118; Directorate Identifier 2004–CE–25–AD'' in your request.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 96–20–07, Amendment 39–9773 (61 FR 51357, October 2, 1996), and by adding a new AD to read as follows:

**2004–21–05 Kelly Aerospace Power Systems (Formerly Janaero Devices, Janitrol, C/D, FL Aerospace, and Midland-Ross Corporation):** Amendment 39–13826; Docket No. FAA–2004–19118; Directorate Identifier 2004–CE–25–AD; Supersedes AD 96–20–07; Amendment 39–9773.

### When Does This AD Become Effective?

(a) This AD becomes effective on November 19, 2004.

### Are Any Other ADs Affected by This Action?

(b) This AD supersedes AD 96–20–07, Amendment 39–9773.

### What Airplanes Are Affected by This AD?

(c) This AD affects Kelly Aerospace Power Systems B-Series Combustion Heaters, Models B1500, B2030, B2500, B3040, B3500, B4050, and B4500, marked as meeting the standards of TSO–C20, that are installed on, but not limited to, the following aircraft (all serial numbers), and are certificated in any category:

| Manufacturer | Models |
|---|---|
| Raytheon Aircraft Company | 58, 58P, 58TC, 60, A60, 76, and 95–B55 Series. |
| Bombardier Inc | CL–215–1A10 (Water Bomber) CL215–6B11 (CL–215T Variant) (CL415 Variant) . |
| The Cessna Aircraft Company | 208, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310N, 310P, 320C, 320D, 320E, 320F, 337 Series, 340, 340A, 414, 414A, 421, 421A, 421B, and 421C. |

**Note 1:** B-Series Combustion Heaters Models B2500, B3500, and B4500 incorporate a new combustion air pressure switch, P/N 94E42. Airplanes that are equipped with P/N 94E42 do not need to conduct an operational test of the combustion air pressure switch. The part number is ink-stamped on the side of these combustion air pressure switches.

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

(d) This AD is the result of reports that the new ceramic-coated combustion tubes are subject to the same distress as the non-ceramic coated combustion tubes. We are issuing this AD to prevent combustion by-products (carbon-monoxide exhaust) and fuel leakage from the combustion heaters caused by failure of the combustion heater system. This failure could result in fire or explosion in the airplane and possible carbon monoxide poisoning of the crew and passengers in the cabin.

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

(e) For airplanes with an affected B-Series combustion heater that does not incorporate an extended-life ceramic-coated combustion tube, do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Perform the following:<br>(i) Using a pressure decay test, inspect the combustion tube of the heater; and<br>(ii) Conduct an operational test of the combustion air pressure switch. In some applications, the air pressure switch is remotely mounted on the airframe and not on the heater. Regardless of where the air pressure switch is located, the operational test requirements of this AD still apply.<br>(iii) If an air pressure switch, part number 94E42 is currently installed, the operational test is not required. | *For airplanes with 450 or more heater hours time-in-service (TIS) accumulated on an installed heater since new installation or since the last overhaul:* Within the next 50 hours TIS or 12 calendar months after November 14, 1996 (the effective date of AD 96–20–07), whichever occurs first, unless already done.<br>*For airplanes with less than 450 heater hours TIS accumulated on an installed heater since new installation or since the last overhaul:* Upon the accumulation of 500 heater hours TIS or within the next 12 calendar months after November 14, 1996 (the effective date of AD 96–20–07), whichever occurs first, unless already done.<br>*After doing the initial inspection and operational test:* Repetitively inspect the combustion tube and perform the operational test of the air pressure switch thereafter at intervals not-to-exceed 100 heater hours TIS or 24 calendar months, whichever occurs first. | Follow the applicable instructions in Janitrol Maintenance and Overhaul Manual 24E25–1. |
| (2) After each inspection required in paragraph (e)(1) of this AD, if the heater does not pass the pressure decay test, overhaul the heater and replace the combustion tube with a serviceable tube or replace the heater assembly. | Prior to further flight after the inspection required in paragraph (e)(1) of this AD in which the combustion tube fails. After the heater is overhauled or replaced with a new heater assembly, the inspection cycle starts over upon the accumulation of 500 heater hours TIS with the repetitive inspection intervals thereafter not-to-exceed 100 heater hours TIS or 24 calendar months, whichever occurs first. | Follow the applicable instructions in Janitrol Maintenance and Overhaul Manual 24E25–1. |

| Actions | Compliance | Procedures |
|---|---|---|
| (3) After each operational test required in paragraph (e)(1) of this AD, if any air pressure switch does not pass, replace the switch with one of the same design or with a P/N 94E42. | Prior to further flight after the operational test required in paragraph (e)(1) of this AD in which the switch failed. After installing a new switch, repetitively test the air pressure switch thereafter at intervals not-to-exceed 100 heater hours TIS or 24 calendar months, whichever occurs first. Replacing the combustion air pressure switch with a P/N 94E42 switch terminates the repetitive operational testing required in paragraph (e)(1) of this AD. | Follow the applicable instructions in Janitrol Maintenance and Overhaul Manual 24E25–1 and JanAero Devices Service Bulletin # A–103, dated September 1995. |
| (4) As an alternative method of compliance to the requirements of this AD, you may disable the heater by doing the following:<br>(i) Cap the fuel supply line;<br>(ii) Disconnect the electrical power and ensure that the connections are properly secured to reduce the possibility of electrical spark or structural damage;<br>(iii) Inspect and test to ensure that the cabin heater system is disabled;<br>(iv) Ensure that no other aircraft system is affected by this action;<br>(v) Ensure that there are no fuel leaks; and<br>(vi) Fabricate a placard with the following words: ''System Inoperative''. Install this placard at the heater control valve within the pilot's clear view. | As of November 14, 1996 (the effective date of AD 96–20–07). | Not applicable. |

**Note 2:** You may use a heater hour meter to determine heater hours time-in-service (TIS). Also, you may divide aircraft hours TIS in half to calculate heater hours TIS.

(f) For airplanes with an affected B-Series combustion heater that does incorporate an extended-life ceramic-coated combustion tube, do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Perform the following:<br>(i) Using a pressure decay test, inspect the combustion tube of the heater; and<br>(ii) Conduct an operational test of the combustion air pressure switch. In some applications, the air pressure switch is remotely mounted on the airframe and not on the heater. Regardless of where the air pressure switch is located, the operational test requirements of this AD still apply.<br>(iii) If an air pressure switch, part number 94E42 is currently installed, the operational test is not required. | Upon the accumulation of 500 heater hours TIS or within the next 100 hours TIS after the November 19, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect the combustion tube and perform the operational test of the air pressure switch thereafter at intervals not-to-exceed 100 heater hours TIS or 24 calendar months, whichever occurs first. | Follow the applicable instructions in Janitrol Maintenance and Overhaul Manual 24E25–1. |
| (2) After each inspection required in paragraph (f)(1) of this AD, if the heater does not pass the pressure decay test, overhaul the heater and replace the combustion tube with a serviceable tube or replace the heater assembly. | Prior to further flight after the inspection required in paragraph (f)(1) of this AD in which the combustion tube fails. After the heater is overhauled or replaced with a new heater assembly, the inspection cycle starts over upon the accumulation of 500 heater hours TIS with the repetitive inspection intervals thereafter not-to-exceed 100 heater hours TIS or 24 calendar months, whichever occurs first. | Follow the applicable instructions in Janitrol Maintenance and Overhaul Manual 24E25–1. |
| (3) After each operational test required in paragraph (f)(1) of this AD, if any air pressure switch does not pass, replace the switch with one of the same design or with a P/N 94E42. | Prior to further flight after the operational test required in paragraph (f)(1) of this AD in which the switch failed. After installing a new switch, repetitively test the air pressure switch thereafter at intervals not-to-exceed 100 heater hours TIS or 24 calendar months, whichever occurs first. Replacing the combustion air pressure switch with a P/N 94E42 switch terminates the repetitive operational testing required in paragraph (f)(1) of this AD. | Follow the applicable instructions in Janitrol Maintenance and Overhaul Manual 24E25–1 and JanAero Devices Service Bulletin # A–103, dated September 1995. |

| Actions | Compliance | Procedures |
|---|---|---|
| (4) As an alternative method of compliance to the requirements of this AD, you may disable the heater by doing the following: (i) Cap the fuel supply line; (ii) Disconnect the electrical power and ensure that the connections are properly secured to reduce the possibility of electrical spark or structural damage; (iii) Inspect and test to ensure that the cabin heater system is disabled; (iv) Ensure that no other aircraft system is affected by this action; (v) Ensure that there are no fuel leaks; and (vi) Fabricate a placard with the following words: "System Inoperative". Install this placard at the heater control valve within the pilot's clear view. | As of the November 19, 2004 (the effective date of this AD). | Not applicable. |

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

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Atlanta ACO, FAA. For information on any already approved alternative methods of compliance, contact Kevin L. Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6063; facsimile: (770) 703–6097.

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

(h) You must do the actions required by this AD following the instructions in JanAero Devices Service Bulletin # A–103, dated September 1995.

(1) On November 14, 1996 (61 FR 51357, October 2, 1996), and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of JanAero Devices Service Bulletin # A–103, dated September 1995.

(2) You may get a copy from Kelly Aerospace Power Systems, PO Box 273, Fort Deposit, Alabama 36032; telephone: (334) 227–8306; facsimile: (334) 227–8596; Internet: *http://www.kellyaerospace.com*. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19118.

Issued in Kansas City, Missouri, on October 13, 2004.

**William J. Timberlake,**

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

[FR Doc. 04–23620 Filed 10–21–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 95

**[Docket No. 30427; Amdt. No. 451]**

## IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, November 25, 2004.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

**The Rule**

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

**Conclusion**

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on October 13, 2004.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, November 25, 2004.

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

## REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 451 effective date, November 25, 2004]

| From | To | MEA | MAA |
|---|---|---|---|
| **§ 95.4000 High Altitude RNAV Routes** | | | |
| **§ 95.4007 RNAV Route Q7 Is Amended To Read in Part** | | | |
| Jinmo, WA WP<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV | Avenal, CA VORTAC | #*29000 | 45000 |
| **§ 95.4009 RNAV Route Q9 Is Amended To Read in Part** | | | |
| SUMMA, WA FIX<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV | Derbb, CA FIX | #*29000 | 45000 |
| **§ 95.4011 RNAV Route Q11 Is Amended To Read in Part** | | | |
| Paage, WA WP<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV | *Los Angeles, CA VORTAC* | #*29000 | 45000 |
| **§ 95.4501 RNAV Route Q501 Is Amended To Read in Part** | | | |
| Sobme, SD WP<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV | Gopher, MN VORTAC | #*24000 | 45000 |
| Gopher, MN VORTAC<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV<br>*Excludes the Portion Within Canada | Vixis, Canada FIX | #*24000 | 45000 |
| **§ 95.4502 RNAV Route Q502 Is Amended To Read in Part** | | | |
| Kenpa, Canada FIX<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV | Gopher, MN VORTAC | #*24000 | 45000 |
| Gopher, MN VORTAC<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV<br>*Excludes the Portion Within Canada | Sobme, SD WP | #*24000 | 45000 |
| **§ 95.4504 RNAV Route Q504 Is Amended To Read in Part** | | | |
| Hemdi, SD WP<br>*18000—GNSS MEA<br>#DME/DME/IRU RNAV<br>*Excludes the Portion Within Canada | Notap, Canada WP | #*24000 | 45000 |
| **§ 95.4505 RNAV Route Q505 Is Amended To Read in Part** | | | |
| Hemdi, SD WP<br>*18000—GNSS MEA<br># DME/DME/IRU RNAV<br>*Excludes the Portion Within Canada | Omaga, Canada FIX | #*24000 | 45000 |

| From | To | MEA |
|---|---|---|
| § 95.6001 VICTOR ROUTES—U.S. § 95.6437 VOR FEDERAL AIRWAY V437 Is Amended To Read in Part | | |
| Ormond Beach, FL VORTAC *1300—MOCA | Jetso, FL FIX | *3000 |

[FR Doc. 04–23375 Filed 10–21–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 529

## Certain Other Dosage Form New Animal Drugs; Oxytetracycline

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for use of oxytetracycline hydrochloride soluble powder for skeletal marking of finfish fry and fingerlings by immersion.

**DATES:** This rule is effective October 22, 2004.

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

**SUPPLEMENTARY INFORMATION:** Phoenix Scientific, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed a supplement to ANADA 200–247 that provides for use of Oxytetracycline HCl Soluble Powder–343 for skeletal marking of finfish fry and fingerlings by immersion. The approval of this supplemental ANADA relied on publicly available safety and effectiveness data contained in Public Master File (PMF) 5667 which were compiled under National Research Support Project 7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses. The supplemental ANADA is approved as of September 15, 2004, and the regulations are amended in 21 CFR 529.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

FDA has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

### List of Subjects in 21 CFR Part 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 529 continues to read as follows:

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

■ 2. Section 529.1660 is amended by revising paragraphs (a) and (b) to read as follows:

### § 529.1660 Oxytetracycline.

(a) *Specifications*—(1) Each gram of powder contains 366 milligrams (mg) oxytetracycline hydrochloride.

(2) Each gram of powder contains 753 mg oxytetracycline hydrochloride.

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter for use of products described in paragraph (a) of this section as in paragraph (d) of this section.

(1) No. 046573 for use of product described in paragraph (a)(1) of this section.

(2) No. 059130 for use of product described in paragraph (a)(2) of this section.

* * * * *

Dated: October 14, 2004.

**Steven D. Vaughn,**

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

[FR Doc. 04–23686 Filed 10–21–04; 8:45 am]

BILLING CODE 4160–01–S

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 54

## [CC Docket Nos. 96–45, 97–21, and 02–6; FCC 04–181]

## Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; and Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects an error in the dates and supplementary sections of a **Federal Register** document regarding the Commission addressing pending petitions for reconsideration filed by Sprint Corporation, United States Telecom Association, Inc., and MCI Worldcom, Inc. The Commission agreed with petitioners that the Commission should seek recovery from schools and libraries in certain instances, and therefore grants their petitions in part. The Commission resolved the limited question raised in the *Second Further Notice of Proposed Rulemaking (Second FNPRM)* in CC Docket No. 02–06 of from whom the Commission will seek recovery of schools and libraries funds disbursed in violation of the statute or a rule. The Commission modified its requirements in this area so that recovery will be sought from whichever party or parties has committed the statutory or rule violation. The summary was published in the **Federal Register** on September 17, 2004.

**DATES:** Effective October 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Schneider, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This summary contains a correction to the dates and supplementary sections of a **Federal Register** summary, 69 FR 55983 (September 17, 2004). The full text of the Commission's Order on Reconsideration and Fourth Report and Order in CC Docket Nos. 96–45, 97–21, and 02–6, FCC 04–181 released on July 30, 2004 is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

■ In rule FR Doc. 04–21005 published September 17, 2004 (69 FR 55983) make the following corrections.

■ 1. On page 55983, in the first column, in the dates section, remove ''September 17, 2004'' and add in its place ''October 17, 2004.''

■ 2. On page 55985, in the second column, in paragraph 24, remove ''September 17, 2004'' and add in its place ''October 17, 2004.''

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–23608 Filed 10–21–04; 8:45 am]

**BILLING CODE 6712–01–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 001005281-0369-02; I.D. 101804C]**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

**ACTION:** Closure.

**SUMMARY:** NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective 12 noon, local time, October 20, 2004, through June 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, phone 727-570-5305, fax: 727-570-5583, e-mail: *Steve.Branstetter@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached on October 19, 2004. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12 noon, local time, October 20, 2004, through June 30, 2005, the end of the fishing year. The boundary between the eastern and western zones is 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30 day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: October 18, 2004.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04–23610 Filed 10–18–04; 3:20 pm]

**BILLING CODE 3510–22–S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 010319075–1217–02; I.D. 101804D]**

## Fisheries of the Northeastern United States; Tilefish Fishery; Adjustment to 2005 Tilefish Commercial Quota and Incidental Permit Trip Limit

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

**ACTION:** Tilefish commercial quota and trip limit adjustment.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) has determined that the quota for the tilefish Part-time permit category has been exceeded for fishing year (FY) 2004, warranting an adjustment of the Part-time permit category quota for FY 2005. Further, the Regional Administrator has determined that the tilefish Incidental permit category has exceeded the 5 percent of total allowable landings (TAL) allowed under the Fishery Management Plan for the Tilefish Fishery (FMP) and warrants a reduction in the annual trip limit for FY 2005. This action complies with the FMP and is intended to continue the rebuilding program in the FMP by taking into account previous overages of the tilefish quota.

**DATES:** Effective October 22, 2004, through October 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Hooker, Fishery Policy Analyst, (978) 281–9220.

**SUPPLEMENTARY INFORMATION:** The regulations at 50 CFR 648.290(c) state that any overages of the quota for any tilefish limited access category that occur in a given fishing year will be subtracted from the quota for that category in the following fishing year. This same section also states that, if the tilefish harvest attributed to the open access Incidental permit category exceeds 5 percent of the total allowable landings (TAL) for a given fishing year, the trip limit for the Incidental category may be reduced the following year. In both of these instances, § 648.290(c) specifies that, if an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

The tilefish quota of 360,098 lb (163,338 kg) for the limited access Part-time permit category (Category C) is being adjusted for FY 2005 (November 1, 2004 - October 31, 2005) through this action. Based upon vessel reports available as of October 13, 2004, FY 2004 tilefish landings for Category C were 217,037 lb (98,446 kg). Therefore, an overage of 16,264 lb (7,377 kg) must be deducted from the FY 2005 Category C quota, which results in an adjusted quota of 343,834 lb (155,960 kg). As a result of the decision in the Hadaja v. Evans lawsuit on May 15, 2003, the permitting and reporting requirements for the FMP were suspended for nearly a year. The decision rendered the quotas for the various limited access permit categories, and the 5 percent of TAL target quota for the open access permit category inoperative. These requirements were reinstated on May 31, 2004. During the period that the permitting and reporting requirements were vacated, it was impossible to attribute tilefish landings to a particular permit category. Consequently, projected landings (159,307 lb (72,260 kg)) were used for the period November 1, 2003 - May 31, 2004. Based on landings for each permit category for the same time period in FY 2002 and FY 2003, a Part-time category quota of 200,791 lb (91,077 kg) was established for the remainder of FY 2004 (June 1–October 31, 2004).

Landings of tilefish by the Incidental permit category in FY 2002 totaled 105,858 lb (48,016 kg) and landings in FY 2003 totaled 178,955 lb (81,173 kg). In both FY 2002 and FY 2003, the Incidental permit category landed over 95 percent of its catch between November and May, the same time period that the reporting requirements were vacated. Thus, the majority of the landings information for the Incidental permit category are not available for FY 2004. An analysis of FY 2002 and FY 2003 landings data determined that a trip limit of 133 lb (60 kg) for Incidental category vessels would be necessary in order to not exceed the 5 percent of TAL for FY 2005 (99,750 lb (45,246 kg)). Thus, this action reduces the trip limit for Incidental category vessels for FY 2005 to 133 lb (60 kg).

This action informs the public of overages of the FY 2004 Part-time permit category quota and adjusts the FY 2005 Part-time permit category quota to account for those overages. Additionally, this action informs the public that the Incidental permit category has previously exceeded 5 percent of the TAL and thus the trip limit for the Incidental category is adjusted to 133 lb (60 kg) for FY 2005.

The FY 2004 tilefish Part-time permit category quota, available FY 2004 tilefish Part-time permit category landings, and the resulting overage of the FY 2004 tilefish Part-time permit category quota are presented in Table 1. The resulting adjusted FY 2005 tilefish Part-time permit category commercial quota is presented in Table 2.

TABLE 1.TILEFISH PART-TIME CATEGORY 2004 LANDINGS AND OVERAGE

| Permit Category | 2004 Quota | | 2004 Landings | | 2004 Overage | |
|---|---|---|---|---|---|---|
| | Lb | Kg[1] | Lb | Kg[1] | Lb | Kg[1] |
| Part-time | 200,791 | 91,077 | 217,037 | 98,446 | 16,264 | 7,377 |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

TABLE 2. TILEFISH PART-TIME CATEGORY ADJUSTED FY 2005 QUOTA

| Permit Category | 2005 Initial Quota | | 2005 Adjusted Quota | |
|---|---|---|---|---|
| | Lb | Kg[1] | Lb | Kg[1] |
| Part-time | 360,098 | 163,338 | 343,834 | 155,961 |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 19, 2004.

**Dean Swanson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04–23730 Filed 10–21–04; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

**Federal Register**

Vol. 69, No. 204

Friday, October 22, 2004

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2004–19222; Directorate Identifier 2004–CE–29–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B airplanes. This proposed AD would require you to inspect the port and starboard undercarriage attach bracket for unwelded areas and replace the attach bracket if unwelded areas are found. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Malaysia. We are issuing this proposed AD to detect and correct inadequate welding of the undercarriage, which could result in cracks. This failure could lead to loss of control of the airplane.

**DATES:** We must receive any comments on this proposed AD by November 29, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Eagle Aircraft (Malaysia) Sdn. Bhd., PO Box 1028, Pejabat Pos Besar, Melanka, Malaysia, 75150; telephone: (606) 317–4105; facsimile: (606) 317–7213.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2004–19222.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorage, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2004–19222; Directorate Identifier 2004–CE–29–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19222. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

### Docket Information

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

### Discussion

*What events have caused this proposed AD?* The Department of Civil Aviation, Malaysia (DCA), which is the airworthiness authority for Malaysia, recently notified FAA that an unsafe condition may exist on all Eagle Aircraft Sdn. Bhd. Model Eagle 150B airplanes. The DCA reports one case of finding cracks on a port main undercarriage attach bracket during a routine inspection. An unwelded area on the adjoining plates of the bracket may have caused stress that resulted in the cracking.

*What is the potential impact if FAA took no action?* Inadequate welding of the undercarriage attach bracket could result in cracks. This failure could lead to loss of control of the airplane.

*Is there service information that applies to this subject?* Eagle Aircraft Sdn. Bhd. has issued Alert Service Bulletin SB 1123, dated August 8, 2004.

*What are the provisions of this service information?* The service bulletin includes procedures for inspecting the port and starboard undercarriage attach bracket for unwelded areas.

*What action did the DCA take?* The DCA classified this service bulletin as mandatory and issued Malaysian CAM AD 001–08–2004 to ensure the continued airworthiness of these airplanes in Malaysia.

*Did the DCA inform the United States under the bilateral airworthiness agreement?* These Eagle 150B airplanes are manufactured in Malaysia and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the DCA has kept us informed of the situation described above.

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

*What has FAA decided?* We have examined the DCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Eagle 150B airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct inadequate welding of the undercarriage attach bracket, which could result in cracks. This failure could lead to loss of control of the airplane.

*What would this proposed AD require?* This proposed AD would require you to inspect the port and starboard undercarriage attach bracket for unwelded areas in the locations specified in the service information and replace the attach bracket if unwelded areas are found.

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

## Costs of Compliance

*How many airplanes would this proposed AD impact?* We estimate that this proposed AD affects 13 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish this proposed inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| .5 work hours × $65 per hour = $32.50 | N/A | $32.50 | $422.50 |

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 work hour × $65 per hour = $65 | If the attach bracket requires replacement, Eagle Aircraft has agreed to provide the parts without cost.. | $65 |

## Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2004–19222; Directorate Identifier 2004–CE–29–AD'' in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Eagle Aircraft (Malaysia) Sdn. Bhd.:** Docket No. FAA–2004–19222; Directorate Identifier 2004–CE–29–AD

### When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 29, 2004.

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

(b) None.

### What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category: Eagle Aircraft (Malaysia) Sdn. Bhd. Eagle 150B airplanes, serial numbers 016 through 044, M1001 through M1003, and M1005.

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

(d) This AD is the result of unwelded areas on the undercarriage attach bracket. The actions specified in this AD are intended to detect and correct inadequate welding of the undercarriage, which could result in cracks. This failure could lead to loss of control of the airplane.

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

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the port and starboard undercarriage attach bracket for unwelded areas. | Within 50 hours time-in-service after the effective date of this AD. | Follow Eagle Aircraft Service Bulletin SB 1123, dated August 8, 2004. |
| (2) If unwelded areas are found: ........................ (i) contact the manufacturer for replacement parts at mailing address Eagle Aircraft, P.O. Box 1028, Pejabat Pos Besar, Melaka, Malaysia 75150; telephone: (606) 317–4105, facsimile: (606) 317–7213; and (ii) install the replacement parts | Prior to further flight after the inspection required by paragraph (e)(1) of this AD. | Follow Eagle Aircraft Service Bulletin SB 1123, dated August 8, 2004. |

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

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorage, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri, 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

**Is There Other Information That Relates to This Subject?**

(g) DCA CAM AD 001–08–2004, dated August 12, 2004, and Eagle Aircraft Alert Service Bulletin SB 1123, dated August 8, 2004, also address the subject of this AD.

**May I Get Copies of the Documents Referenced in This AD?**

(h) To get copies of the documents referenced in this AD, contact Eagle Aircraft, PO Box 1028, Pejabat Pos Besar, Melaka, Malaysia, 75150; telephone: (606) 317–4105; facsimile: (606) 317–7213. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2004–19222.

Issued in Kansas City, Missouri, on October 14, 2004.

**William J. Timberlake,**

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

[FR Doc. 04–23623 Filed 10–21–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19078; Directorate Identifier 98–CE–17–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company (Raytheon) Beech 200 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to revise AD 98–20–38, which applies to all Beech 200 series airplanes. AD 98–20–38 requires you to revise the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for and procedures for exiting from severe icing conditions. Part of the applicability of AD 98–20–38 includes the Raytheon Models B200 and B200C airplanes. AD 96–09–13 already requires AFM revisions on this subject for these airplane models. Consequently, FAA is revising AD 98–20–38 to remove the Models B200 and B200C from the applicability and add clarification that AD 96–09–13 affects these airplanes. We are issuing this proposed AD to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations.

**DATES:** We must receive any comments on this proposed AD by December 7, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may view the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064: facsimile: (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19078; Directorate Identifier. 98–CE–17–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19078. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

**Docket Information**

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

**Discussion**

*Has FAA taken any action to this point?* A review of the requirements for certification of Raytheon Beech 200 series airplanes in icing conditions caused FAA to issue AD 98–20–38, Amendment 39–10806 (63 FR 51805, September 29, 1998). AD 98–20–38 requires you to revise the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for and procedures for exiting from severe icing conditions.

*What has happened since AD 98–20–38 to initiate this proposed action?* Part of the applicability of AD 98–20–38 includes the Raytheon Models B200 and B200C airplanes. AD 96–09–13 already requires AFM revisions on this subject for these airplane models. The language is similar but is not the same and AD 96–09–13 reflects the preferred information. Consequently, FAA is revising AD 98–20–38 to remove the Models B200 and B200C from the applicability and add clarification that AD 96–09–13 affects these airplanes.

**FAA's Determination and Requirements of This Proposed AD**

*What has FAA decided?* We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

*What would this proposed AD require?* This proposed AD would revise AD 98–20–38 to remove the Beech Models B200 and B200C from the applicability. The Beech Models B200 and B200C are still affected by the actions of AD 96–09–13.

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

**Costs of Compliance**

*How many airplanes would this proposed AD impact?* We estimate that this proposed AD affects 1,600 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* The cost estimate of this AD is the same per airplane as AD 98–20–38. However, the proposed AD would affect fewer airplanes than AD 98–20–38.

**Regulatory Findings**

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19078; Directorate Identifier 98–CE–17–AD" in your request.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–20–38, Amendment 39–10806 (63 FR 51805, September 29, 1998), and by adding a new AD to read as follows:

**Raytheon Aircraft Company:** Docket No. FAA–2004–19078; Directorate Identifier 98–CE–17–AD.

*When Is the Last Date I Can Submit Comments on This Proposed AD?*

(a) We must receive comments on this proposed airworthiness directive (AD) by December 7, 2004.

*What Other ADs Are Affected by This Action?*

(b) This AD revises AD 98–20–38, Amendment 39–10806.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models, all serial numbers, that are certificated in any category:

(1) Beech 200 (A100–1 (U–21J))
(2) Beech 200C
(3) Beech 200CT
(4) Beech 200T
(5) Beech A200 (C–12A) or (C–12C)
(6) Beech A200C (UC–12B)
(7) Beech A200CT (C–12D), (FWC–12D), (RC–12D), (C–12F), (RC–12G), (RC–12H), (RC–12K), or (RC–12P)
(8) B200CT

(9) B200T

**Note 1:** The actions of AD 96–09–13 are required for the Beech Models B200 and B200C airplanes.

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

(d) The actions specified in this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations.

*What Must I Do to Address This Problem?*

(e) Within 30 days after November 4, 1998 (the effective date of AD 98–20–38), do the requirements of paragraphs (e)(1) and (e)(2) of this AD, unless already accomplished.

**Note 2:** Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

**''WARNING**

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

- During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.
- Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
- Accumulation of ice on the upper surface of the wing, aft of the protected area.
- Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.
- Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.
- All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

**''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:**

- Visible rain at temperatures below 0 degrees Celsius ambient air temperature.
- Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

**PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:**

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

- Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control.''

(f) As an alternative method of compliance to the actions required by paragraph (e)(2) of this AD, revise the Abnormal Procedures Section or Emergency Procedures Section of the AFM instead of the Normal Procedures section of the AFM. Insert the information presented in paragraph (e)(2) of this AD into the applicable AFM section.

(g) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate the AFM revisions required by this AD. Enter this information into the aircraft records showing compliance with this AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

*May I Request an Alternative Method of Compliance?*

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

*May I Get Copies of the Documents Referenced in This AD?*

(i) You may view the AD docket at the Docket Management Facility; US Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

Issued in Kansas City, Missouri, on October 15, 2004.

**Dorenda D. Baker,**

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

[FR Doc. 04–23728 Filed 10–21–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 655

**[FHWA Docket No. FHWA–2003–15149]**

**RIN 2125–AE98**

## National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Maintaining Traffic Sign Retroreflectivity

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Propsed rule; extension of comment period.

**SUMMARY:** The FHWA is extending the comment period for a notice of proposed amendments (NPA) to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments on maintaining traffic sign retroreflectivity, which was published on July 30, 2004, at 69 FR 45623. The original comment period is set to close on October 28, 2004. The extension is based on concern expressed by the National Committee on Uniform Traffic Control Devices, (NCUTCD) and the American Association of State Highway and Transportation Officials (AASHTO) that the October 28 closing date does not provide sufficient time for discussion of the issues in committee and a subsequent comprehensive response to the docket. The FHWA recognizes that others interested in commenting may have similar time constraints and agrees that the comment

period should be extended. Therefore, the closing date for comments is changed to February 1, 2005, which will provide the NCUTCD, the AASHTO, and others interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

**DATES:** Submit comments on or before February 1, 2005.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitted comments). All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. 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.). Persons making comments 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 may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter J. Hatzi, Office of Safety Design (HSA–10), (202) 366–8036, or Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access and Filing

Interested parties may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission, retrieval help and guidelines are available under the help section of the website.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

## Background

The FHWA has conducted extensive research on the minimum levels of sign retroreflectivity. This research led to the development of proposed minimum maintained levels of traffic sign retroreflectivity, and a complement of maintenance methods for implementing the levels. On July 30, 2004, the FHWA published in the **Federal Register** a notice of proposed amendments (NPA) proposing changes to the MUTCD to include methods to maintain traffic sign retroreflectivity. The proposed maintenance methods would establish a basis for improving nighttime visibility of traffic signs to promote safety, enhance traffic operations, and facilitate comfort and convenience for all drivers.

The existing MUTCD requires that traffic signs be illuminated or retroreflective. However, until recently, little information was available about the levels of retroreflectivity necessary to meet the needs of drivers and thereby define the useful life of signs. The NPA for maintaining traffic sign retroreflectivity is proposing guidance for evaluating and maintaining traffic sign retroreflectivity to address the needs of drivers. The methods proposed would allow agencies options for evaluating and managing their signs.

The NPA proposes a seven-year compliance period for regulatory, warning, and post mounted guide signs and a 10-year compliance period for overhead guide signs and street name signs.

The original comment period for the NPA closes on October 28, 2004. The NCUTCD and the AASHTO have expressed concern that this closing date does not provide sufficient time to review and discuss the proposed changes; and then, develop and submit complete responses to the docket. To allow time for these organizations and others to submit comprehensive comments, the closing date is changed from October 28, 2004, to February 1, 2005.

**Authority:** 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); sec. 406(a), Pub. L. 102–388, 106 Stat. 1520, 1564, 23 CFR 1.32 and 49 CFR 1.48(b).)

Issued on: October 18, 2004.

**Mary E. Peters,**

*Federal Highway Administrator.*

[FR Doc. 04–23674 Filed 10–21–04; 8:45 am]

BILLING CODE 4910–22–P

# DEPARTMENT OF EDUCATION

## 34 CFR Part 225

RIN 1855–AA02

## Credit Enhancement for Charter School Facilities Program

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary issues these proposed regulations to administer the Credit Enhancement for Charter School Facilities program and its predecessor, the Charter School Facilities Financing Demonstration Grant program. Under this program, the Department provides competitive grants to entities that are non-profit or public or are consortia of these entities to demonstrate innovative credit enhancement strategies to assist charter schools in acquiring, constructing, and renovating facilities through loans, bonds, other debt instruments, or leases.

**DATES:** We must receive your comments on or before November 22, 2004.

**ADDRESSES:** Address all comments about these proposed regulations to Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*. You must include the term ''credit enhancement'' in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Valarie Perkins or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140. Telephone: (202) 260–1924 or via Internet, at: *charter.facilities@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:**

## Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 4W258, 400 Maryland Avenue, SW., Washington, DC, 20202–6140, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

## Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## Background

These proposed regulations would apply to both (a) the Credit Enhancement for Charter School Facilities program, which is authorized under title V, part B, subpart 2 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110, enacted January 8, 2002) and (b) its predecessor, the Charter School Facilities Financing Demonstration Grant program, as authorized by title X, part C, subpart 2 of the Act as part of the Department of Education Appropriations Act, 2001 as enacted by the Consolidated Appropriations Act, 2001. The purpose of this program is to assist charter schools in meeting their facilities needs. Under this program, funds are provided on a competitive basis to public and nonprofit entities, and consortia of these entities, to leverage other funds and help charter schools acquire school facilities through such means as purchase, lease, and donation. Grantees may also use grants to leverage other funds to help charter schools construct and renovate school facilities.

To help leverage funds for charter school facilities, grant recipients may, among other things: Guarantee and insure debt, including bonds, to finance charter school facilities; guarantee and insure leases for personal and real property; facilitate a charter school's facilities financing by identifying potential lending sources, encouraging private lending, and carrying out other, similar activities; and establish temporary charter school facilities that new charter schools may use until they can acquire a facility on their own.

Sections in these proposed regulations that govern the management of grants would apply to grants under both the Credit Enhancement for Charter School Facilities program and its predecessor, the Charter School Facilities Financing Demonstration Grant program. These two programs are virtually identical and grants made under them will operate for several years. Sections related to grantee selection would apply only to grant competitions conducted after fiscal year (FY) 2004.

## Proposed Regulations

The primary purpose of this regulation is to establish selection criteria for this complex program's discretionary grant competitions after FY 2004. Since we seek to award grants to high-quality applicants with high-quality plans to use their grant funds, these criteria essentially include assessments on the quality of the applicant and the quality of the applicant's plan. The criteria also assess how applicants propose to leverage private or public sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs. The proposed selection criteria are similar to those we have used in the two previous competitions for this program. As noted above, this proposed regulation also includes a few provisions that govern the ongoing management of the grants already awarded in preceding fiscal years.

## Executive Order 12866

### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

### Summary of Potential Costs and Benefits

The Secretary believes that these regulations are necessary to clarify complex statutory provisions. As noted elsewhere, these proposed regulations add clarity where the statute is ambiguous or reorganize statutory material to facilitate a better understanding of the statute's requirements. Nearly all of the benefits and costs of these proposed regulations stem from the underlying legislation and not the regulations. The costs associated with these proposed regulations are not only minimal but are also justified in terms of the benefits that successful applicants for these discretionary grants will receive. For example, the statute requires an application and the types of information that would be collected through the proposed selection criteria should be readily available to applicants under this program.

### *2. Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

○ Are the requirements in the proposed regulations clearly stated?

○ Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

○ Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

○ Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 225.1 *What is the Credit Enhancement for Charter School Facilities Program?*)

○ Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

○ What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be tangentially affected by these proposed regulations are small grantees and, tangentially, small charter schools that ultimately benefit from services provided by grantees. In addition, we do not believe that the regulations would have a significant economic impact on the limited number of small grantees and small charter schools affected because the proposed regulations would not impose excessive regulatory burdens on those entities or require unnecessary Federal supervision.

The proposed regulations would benefit both small and large entities in that they clarify confusing and complex statutory requirements. Also, since the statute requires Credit Enhancement for Charter School Facilities applicants to apply to the Department if they wish to receive discretionary funds, it would be difficult for the Department to award funds without the application information specified in the proposed regulations. The proposed regulations will ensure that applicants do not provide significant amounts of information that is already otherwise available to the Department.

The proposed regulations would impose minimal paperwork burden requirements for all applicants and minimal requirements with which grant recipients must comply. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Credit Enhancement for Charter School Facilities program.

**Paperwork Reduction Act of 1995**

Sections 225.11 and 225.12 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Credit Enhancement for Charter School Facilities Grant Program

The Department will use the information collected through the selection criteria and competitive priority to determine whether to fund applicants. Since the statute requires applicants to apply for funds, the Department would not be able to award these funds without the application to collect the required information.

We estimate the annual reporting and recordkeeping burden for this collection of information to average 80 hours for each respondent for 30 applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 2400 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

○ Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

○ Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;

○ Enhancing the quality, usefulness, and clarity of the information we collect; and

○ Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

The proposed regulations would benefit both small and large entities in that they clarify confusing and complex statutory requirements. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Credit Enhancement for Charter School Facilities program.

Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be placed in the public comment file and considered in the preparation of the final regulations.

**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.

**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.

You may also view this document in PDF at the following site: *http://www.ed.gov/programs/charterfacilities/index.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 84.354A Credit Enhancement for Charter School Facilities Program.)

**List of Subjects in 34 CFR Part 225**

Charter Schools, Credit Enhancement, Education, Educational facilities, Elementary and secondary education, Grant programs—education, Report and recordkeeping requirements, Schools.

Dated: October 19, 2004.

**Nina Shokraii Rees,**

*Assistant Deputy Secretary for Innovation and Improvement.*

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 225 to read as follows:

## PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM



**Authority:** 20 U.S.C. 7223, unless otherwise noted.

### Subpart A—General

#### § 225.1 What is the Credit Enhancement for Charter School Facilities Program?

(a) The Credit Enhancement for Charter School Facilities Program provides grants to eligible entities to assist charter schools in obtaining facilities.

(b) Grantees use these grants to do the following:

(1) Assist charter schools in obtaining loans, bonds, and other debt instruments for the purpose of obtaining facilities.

(2) Assist charter schools in obtaining leases of facilities.

(c) Grantees may demonstrate innovative credit enhancement initiatives while meeting the program purposes under paragraph (b) of this section.

(d) For the purposes of these regulations, the Credit Enhancement for Charter School Facilities Program includes grants made under the Charter School Facilities Financing Demonstration Grant Program.

(Authority: 20 U.S.C. 7223)

#### § 225.2 Who is eligible to receive a grant?

The following are eligible to receive a grant under this part:

(a) A public entity, such as a State or local governmental entity;

(b) A private nonprofit entity; or

(c) A consortium of entities described in paragraphs (a) and (b) of this section.

(Authority: 20 U.S.C. 7223a; 7223i(2))

#### § 225.3 What regulations apply to the Credit Enhancement for Charter School Facilities Program?

The following regulations apply to the Credit Enhancement for Charter School Facilities Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Educational Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(b) The regulations in this part 225.

(Authority: 20 U.S.C. 1221e–3; 1232)

#### § 225.4 What definitions apply to the Credit Enhancement for Charter School Facilities Program?

(a) *Definitions in the Act.* The following term used in this part is defined in section 5210 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001: Charter school.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1: Acquisition, Applicant, Application, Award, Department, EDGAR, Facilities, Grant, Grantee, Nonprofit, Private, Project, Public, and Secretary.

(Authority: 20 U.S.C. 7221(i)(1); 7223d)

### Subpart B—How Does the Secretary Award a Grant?

#### § 225.10 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 225.11.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 7223; 1232)

#### § 225.11 What selection criteria does the Secretary use in evaluating an application for a Credit Enhancement for Charter School Facilities grant?

The Secretary uses the following criteria to evaluate an application for a Credit Enhancement for Charter School Facilities grant:

(a) *Quality of project design and significance.* (35 points) In determining the quality of project design and significance, the Secretary considers—

(1) The extent to which the grant proposal would provide financing to

charter schools at better rates and terms than they can receive absent assistance through the program;

(2) The extent to which the project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the program;

(3) The extent to which the project implementation plan and activities, including the partnerships established, are likely to achieve measurable objectives that further the purposes of the program;

(4) The extent to which the project is likely to produce results that are replicable;

(5) The extent to which the project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;

(6) The extent to which the proposed activities will leverage the private or public sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs absent the program;

(7) The extent to which the project will serve charter schools in States with strong charter laws, consistent with the criteria for such laws in section 5202(e)(3) of the Elementary and Secondary Education Act of 1965; and

(8) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the project.

(b) *Quality of project services.* (15 points) In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the charter schools to be served;

(2) The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.

(c) *Capacity.* (35 points) In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a charter school;

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners or other grant project participants, the specific resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure charter schools within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the charter school facilities programs, their performance in implementing these grants.

(d) *Quality of project personnel.* (15 points) In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project.

(Authority: 20 U.S.C. 7223; 1232)

### § 225.12 What funding priority may the Secretary use in making a grant award?

(a) The Secretary may award up to 15 additional points under a competitive priority regarding the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families.

(b) The Secretary may elect to—

(1) Use this competitive priority only in certain years; and

(2) Consider the points awarded under this priority only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 225.11.

(Authority: 20 U.S.C. 7223; 1232)

## Subpart C—What Conditions Must Be Met by a Grantee?

### § 225.20 When may a grantee draw down funds?

(a) A grantee may draw down funds after it has signed a performance agreement acceptable to the Department of Education and the grantee.

(b) A grantee may draw down and spend a limited amount of funds prior to reaching an acceptable performance agreement provided that the grantee requests to draw down and spend a specific amount of funds and the Department of Education approves the request in writing.

(Authority: 20 U.S.C. 7223d)

### § 225.21 What are some examples of impermissible uses of reserve account funds?

(a) Grantees must not use reserve account funds to—

(1) Directly pay for a charter school's construction, renovation, repair, or acquisition; or

(2) Provide a down payment on facilities in order to secure loans for charter schools. A grantee may, however, use funds to guarantee a loan for the portion of the loan that would otherwise have to be funded with a down payment.

(b) In the event of a default of payment by a charter school whose loan or lease is guaranteed by reserve account funds, a grantee may use these funds to cover defaulted payments that are referenced under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 7223d)

[FR Doc. 04–23746 Filed 10–21–04; 8:45 am]

BILLING CODE 4000–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

**[Docket No. FEMA–D–7606]**

## Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

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

*Executive Order 12612, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| | **ALABAMA Madison County** | | | |
| Big Cove Creek | Approximately 0.4 mile upstream of the confluence with Flint River. | *600 | *599 | Madison County (Unincorporated Areas), City of Huntsville |
| | Approximately 0.9 mile upstream of Dug Hill Road. | None | *688 | |
| Big Cove Creek Tributary. | At the confluence with Big Cove Creek | None | *656 | Madison County (Unincorporated Areas), City of Huntsville |
| | Approximately 0.7 mile upstream of the confluence with Big Cove Creek. | None | *679 | |
| Peevey Creek | Approximately 1.2 miles upstream of the confluence with Robinson Mill Creek. | *607 | *608 | Madison County (Unincorporated Areas), City of Huntsville |
| | Approximately 2.2 miles upstream of the confluence with Robinson Mill Creek. | None | *639 | |

**City of Huntsville**

Maps available for inspection at the City of Huntsville City Hall, 320 Fountain Circle, 2nd Floor, Huntsville, Alabama.

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |

Send comments to the Honorable Loretta Spencer, Mayor of the City of Huntsville, 308 Fountain Circle, Huntsville, Alabama 35805.

**Madison County (Unincorporated Areas)**

Maps available for inspection at the Madison County Engineering Department, 814 Cook Avenue, Huntsville, Alabama.

Send comments to The Honorable Mike Gillespie, Chairman of Madison County, 100 North Side Square, Huntsville, Alabama 35801.

**ALABAMA**
**Morgan County**

| Source of flooding | Location | Existing | Modified | Communities affected |
|---|---|---|---|---|
| Bakers Creek | Approximately 1,600 feet upstream of the confluence with the Tennessee River. | •559 | •558 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 100 feet downstream of West Morgan Road. | •620 | •621 | |
| Tributary to Bakers Creek. | At the confluence with Bakers Creek | •598 | •595 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 150 feet upstream of Cumberland Avenue Southwest. | None | •611 | |
| Betty Rye Branch | Approximately 0.8 mile upstream of the confluence with the Tennessee River. | •560 | •559 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 150 feet upstream of Bedford Drive Southwest. | •609 | •607 | |
| Black Branch | Just upstream of Point Mallard Drive (8th Street Southeast). | •566 | •562 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 0.2 mile upstream of Regency Boulevard. | •567 | •566 | |
| Brush Creek | Approximately 650 feet downstream of Brookmead Road. | •561 | •562 | City of Decatur |
| | Approximately 0.2 mile upstream of Royal Drive. | •567 | •568 | |
| Chapel Hill Branch | Approximately 0.4 mile upstream of the confluence with West Flint Creek. | None | •572 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 2.0 miles upstream of the confluence with West Flint Creek. | None | •594 | |
| Clark Spring Branch | Approximately 800 feet upstream of the confluence with Brush Creek. | •567 | •568 | City of Decatur |
| | Approximately 400 feet upstream of Asheville Drive Southwest. | None | •641 | |
| Clark Spring Branch Tributary. | At the confluence with Clark Spring Branch | •588 | •587 | City of Decatur |
| | Approximately 300 feet upstream of Danville Park Drive Southwest. | None | •613 | |
| Dry Branch | Approximately 0.5 mile downstream of Washington Street. | •560 | •559 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 900 feet upstream of Runnymead Avenue Southwest. | •605 | •604 | |
| North Dinsmore | Just downstream of U.S. Highway 31 | •563 | •564 | City of Decatur |
| | Approximately 100 feet upstream of Cedar Lake Road. | None | •575 | |
| South Dinsmore Middle Tributary. | Approximately 50 feet downstream of U.S. Highway 31. | •563 | •564 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 250 feet upstream of Spring Avenue. | None | •610 | |
| South Dinsmore North Tributary. | At the confluence with South Dinsmore Middle Tributary. | None | •567 | City of Decatur |
| | Approximately 0.5 mile upstream of Lenwood Road. | None | •570 | |
| South Dinsmore South Tributary. | At the confluence with South Dinsmore Middle Tributary. | None | •571 | Morgan County (Unincorporated Areas), City of Decatur |
| | Approximately 1,600 feet upstream of Central Avenue. | None | •576 | |

**City of Decatur**

Maps available for inspection at the City of Decatur Building Department, 402 Lee Street Northeast, Fourth floor, Decatur, Alabama.

Send comments to The Honorable Lynn C. Fowler, Mayor of the City of Decatur, P.O. Box 488, Decatur, Alabama 35602.

**Morgan County (Unincorporated Areas)**

Maps available for inspection at the Morgan County Engineering Department, 580 Shull Road, Northeast, Hartselle, Alabama.

Send comments to The Honorable Larry Benrich, Chairman of the Morgan County Commission, P.O. Box 668, Decatur, Alabama 35601.

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| **NORTH CAROLINA Currituck County** | | | | |
| Moyock Run | Approximately 100 feet upstream of South Mills Road (S.R. 1227). | None | •10 | Currituck County (Unincorporated Areas) |
| | Approximately 1.1 miles upstream of South Mills Road (S.R. 1227). | None | •11 | |
| Atlantic Ocean | At the Virginia State Boundary | •12 | •16 | Currituck County (Unincorporated Areas) |
| | Approximately 500 feet west of the intersection of Spindrift Trail and Land Fall Court. | None | •7 | |
| Currituck Sound | Approximately 0.9 mile east of the intersection of Red Dog Lane and Highway 158. | •7 | •8 | Currituck County (Unincorporated Areas) |
| | At the northeast corner of the intersection of Brabble Street and Highway 168. | •5 | •4 | |

**Currituck County (Unincorporated Areas)**
Maps available for inspection at the Currituck County Planning and Inspections Department, 153 Courthouse Road, Currituck, North Carolina.
Send comments to Mr. Dan Scanlon, Currituck County Manager, 153 Courthouse Road, Currituck, North Carolina 27929–0039.

| | | | | |
|---|---|---|---|---|
| **NORTH CAROLINA Johnston County** | | | | |
| East Mingo Creek | At the confluence with Mingo Swamp | None | •220 | Town of Benson, Johnston County (Unincorporated Areas) |
| | Approximately 0.3 mile downstream of Dennig Road. | None | •244 | |
| Mingo Swamp | At the Johnston/Sampson county line | None | •172 | Town of Benson, Johnston County (Unincorporated Areas) |
| | Approximately 0.7 mile upstream of Red Hill Church Road. | None | •255 | |
| Mingo Swamp Tributary 2. | At the Johnston Harnett county line | None | •205 | Town of Benson, Johnston County (Unincorporated Areas) |
| | Approximately 400 feet upstream of Hodges Chapel Road. | None | •244 | |

**Town of Benson**
Maps available for inspection at the Benson Town Hall, Zoning Department, 303 East Church Street, Benson, North Carolina.
Send comments to The Honorable Don Johnson, Mayor of the Town of Benson, P.O. Box 69, Benson, North Carolina 27504.
**Johnston County (Unincorporated Areas)**
Maps available for inspection at the Johnston County Public Utilities Office, 309 East Market Street, Smithfield, North Carolina.
Send comments to Mr. Rick Hester, Johnston County Manager, P.O. Box 1049, Smithfield, North Carolina 27577.

| | | | | |
|---|---|---|---|---|
| **NORTH CAROLINA Wayne County** | | | | |
| Buck Marsh Branch | Approximately 0.2 mile downstream of Zion Church Road. | None | •94 | Wayne County (Unincorporated Areas) |
| | Approximately 0.3 mile upstream of James Price Road. | None | •119 | |
| Cabin Branch | Approximately 0.9 mile downstream of NC 111 South. | None | •97 | Wayne County (Unincorporated Areas) |
| | Approximately 0.9 mile upstream of Cornerstone Drive. | None | •135 | |
| Horsepen Branch | At confluence with Lewis Branch | None | •120 | Wayne County (Unincorporated Areas) |
| | Approximately 450 feet upstream of Emmaus Church Road. | None | •155 | |
| Jones Branch | Approximately 0.4 mile downstream of Mark Herring Road. | None | •101 | Wayne County (Unincorporated Areas) |
| | Approximately 1.0 mile upstream of Mark Herring Road. | None | •133 | |
| Jumping Run Branch | Approximately 0.3 mile downstream of NC Highway 55. | None | •110 | Wayne County (Unincorporated Areas) |
| | Approximately 0.8 mile upstream of NC Highway 55. | None | •127 | |
| Lewis Branch | Just upstream of NC Highway 55 | None | •106 | Wayne County (Unincorporated Areas) |
| | Approximately 1.4 miles upstream of the confluence of Horsepen Branch. | None | •137 | |

**Unincorporated Areas of Wayne County**

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) Existing | Modified | Communities affected |
|---|---|---|---|---|
| Maps available for inspection at the Wayne County Planning Department, 224 East Walnut Street, Goldsboro, North Carolina. Send comments to Mr. Lee Smith, Wayne County Manager, P.O. Box 227, Goldsboro, North Carolina 27533–0227. | | | | |
| **NORTH CAROLINA Town of Smithfield, Johnston County** | | | | |
| Spring Branch | At the upstream side of East Second Street | •129 | •128 | Town of Smithfield |
| | Approximately 265 feet upstream of Collier Street. | •143 | •144 | |
| **Town of Smithfield** Maps available for inspection at the Smithfield Town Hall, 350 East Market Street, Smithfield, North Carolina. Send comments to The Honorable Bill Jordan, Mayor of the Town of Smithfield, P.O. Box 761, Smithfield, North Carolina 27577. | | | | |
| **PENNSYLVANIA Township of Manheim, Lancaster County** | | | | |
| Landis Run | Approximately 1,000 feet downstream of New Holland Pike. | •278 | •279 | Township of Manheim |
| | Approximately 150 feet downstream of Butter Road. | •305 | •306 | |
| Maps available for inspection at the Manheim Township Office, 1840 Municipal Drive, Lancaster, Pennsylvania. Send comments to Mr. James Martin, Manager of the Township of Manheim, 1840 Municipal Drive, Lancaster, Pennsylvania 17601–4162. | | | | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 18, 2004.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 04–23702 Filed 10–21–04; 8:45 am]

BILLING CODE 9110–12–P

# Notices

Federal Register

Vol. 69, No. 204

Friday, October 22, 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

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Child Nutrition Database

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Food and Nutrition Service to request an extension of a currently approved collection. This collection is the voluntary submission of data including nutrient data from the food service industry to update and expand the Child Nutrition Database in support of the School Meals Initiative for Healthy Children.

**DATES:** Comments on this notice must be received by December 21, 2004, to be assured of consideration.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval and will become a matter of public record. Comments may be sent to: William Wagoner, Team Leader, Technical Assistance Section, Nutrition Promotion and Training Branch, Child Nutrition Division, room 632, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instruments and instruction should be directed to William Wagoner at (703) 305–2609.

**SUPPLEMENTARY INFORMATION:**

*Title:* Data Collection to Expand the Child Nutrition Database.

*OMB Number:* 0584–0494.

*Expiration Date:* 02–2005.

*Type of Request:* Extension of currently approved collection.

*Abstract:* The development of the Child Nutrition (CN) Database, previously known as the National Nutrient Database for Child Nutrition Programs, is regulated by the United States Department of Agriculture (USDA) School Meals Initiative for Healthy Children. This database is designed to be incorporated in USDA approved nutrition analysis software programs and provide an accurate source of nutrient data. The software allows schools participating in the National School Lunch (NSLP) and School Breakfast (SBP) Programs to analyze meals and measure the compliance of the menus to established nutrition goals and standards specified in 7 CFR 210.10 for the NSLP and 7 CFR 220.8 for the SBP. The information collection for the CN Database is conducted using an outside contractor. The CN Database needs to be updated with an extensive database of brand name or manufactured foods commonly used in school food service. The Food and Nutrition Service's contractor collects this data from the food industry to update and expand the CN Database. The submission of data from the food industry will be strictly voluntary, and based on analytical, calculated, or nutrition facts label sources.

*Respondents:* The respondents are the manufacturers of food products for school food service.

*Estimate of Burden:*

**Form FNS–709**

*Number of Respondents:* 60.

*Estimated Number of Responses per Respondent:* 40.

*Estimated Time per Response:* 0.33 Hours (20 Minutes).

*Total Annual Burden:* 800 Hours.

**Form FNS–710**

*Number of Respondents:* 15.

*Estimated Number of Responses per Respondent:* 50.

*Estimated Time per Response:* 2 Hours.

*Total Annual Burden:* 1500 Hours.

*Total Annual Burden for Form 710 & 709:* 2300 Hours.

Dated: October 12, 2004.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 04–23645 Filed 10–21–04; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 04–031N]**

### Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

**AGENCY:** Food Safety and Inspection Service (FSIS), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the U.S. Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). Nominations for membership are being sought from individuals with scientific expertise in the fields of epidemiology, food technology, microbiology (food, clinical, and predictive), risk assessment, infectious disease, biostatistics, and other related sciences. Persons from State and Federal governments, industry and academia are invited to submit nominations. Members who are not Federal government employees will be appointed to serve as non-compensated special government employees (SGEs). SGEs will be subject to appropriate conflict of interest statutes and standards of ethical conduct.

**DATES:** The nominee's typed resume or curriculum vitae must be received by November 22, 2004.

**ADDRESSES:** Nominations should be sent to Ms. Karen Thomas, Advisory Committee Specialist, USDA, Food Safety and Inspection Service, Room

333 Aerospace Center, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Thomas, Advisory Committee Specialist, at the above address or by telephone (202) 690–6620 or Fax (202) 690–6634.

**SUPPLEMENTARY INFORMATION:**

## Background

The NACMCF was established in March 1988, in response to a recommendation in a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The current charter for the NACMCF and other information about the Committee are available for viewing on the NACMCF homepage at *http://www.fsis.usda.gov/About_FSIS/NACMCF/index.asp.*

The Committee provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. For example, the Committee assists in the development of criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

Appointments to the Committee will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services to ensure that recommendations made by the Committee take into account the needs of the diverse groups served by the Department. Membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Given the complexity of issues, the full Committee expects to meet at least once yearly, and the meetings will be announced in the **Federal Register**. The subcommittees will meet as deemed necessary by the chairperson and will be held as working group meetings in an open public forum. The subcommittee meetings will not be announced in the **Federal Register**. FSIS will announce the agenda and subcommittee working group meetings through the Constituent Update available on-line at *http://www.fsis.usda.gov.* NACMCF holds subcommittee working group meetings in order to accomplish the work of NACMCF; all work accomplished by the subcommittees is reviewed and approved by the full Committee during a public meeting of the full Committee, as announced in the **Federal Register**. The subcommittee may invite technical experts to present information for consideration by the subcommittee. All data and records available to the full Committee are expected to be available to the public at the time the full Committee reviews and approves the work of the subcommittee.

Appointment to the Advisory Committee is a two-year term; renewable for a total of three consecutive terms. Members must be prepared to work outside of scheduled Committee and subcommittee meetings, and may be required to assist in document preparation. Committee members serve on a voluntary basis; however, travel reimbursement and per diem are available.

## Regarding Nominees Who Are Selected

All nominees who are selected must submit a USDA Advisory Committee Membership Background Information form AD–755, available on-line at: *http://www.fsis.usda.gov/FSISForms/AD–755.pdf.*

In particular to their appointment, SGEs must complete the Office of Government Ethics (OGE) 450 Confidential Financial Disclosure Report, as new entrants before rendering any advice, or prior to their first meeting. All members will be reviewed for conflict of interest pursuant to 18 U.S.C. 208 in relation to specific NACMCF work charges. Financial disclosure updates will be required of members before each meeting. Members must report any changes in financial holdings requiring additional disclosure. OGE 450 forms are available on-line at *http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/forms/fr450fill_03.pdf.*

## Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it both on-line through the FSIS Web page located at *http://www.fsis.usda.gov* and the NACMCF Web page at *http://www.fsis.usda.gov/About_FSIS/NACMCF/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done at Washington, DC, on October 19, 2004.

**Barbara J. Masters,**

*Acting Administrator.*

[FR Doc. 04–23823 Filed 10–21–04; 8:45 am]

**BILLING CODE 3410–DM–P**

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# DEPARTMENT OF AGRICULTURE

## Food Safety and Inspection Service

**[Docket No. 04–039N]**

## National Advisory Committee on Microbiological Criteria for Foods; Renewal

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of Re-chartering of Committee.

**SUMMARY:** This notice is announcing the re-chartering of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). The Committee has been renewed in cooperation with the Department of Health and Human Services (HHS). The establishment of the Committee was recommended by a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The current charter for the NACMCF is available for viewing on the NACMCF homepage at *http://www.fsis.usda.gov/About_FSIS/NACMCF_Charter/.*

**FOR FURTHER INFORMATION CONTACT:** Karen Thomas, Advisory Committee Specialist, United States Department of Agriculture (USDA), Food Safety and Inspection Service, Room 333 Aerospace Center, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Background materials are available for inspection on the Web at the above address or by contacting Ms. Thomas at (202) 690–6620.

**SUPPLEMENTARY INFORMATION:**

## Background

The United States Department of Agriculture (USDA) is charged with the administration and the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). The Secretary of HHS is charged with the administration and enforcement of the Federal Food, Drug, and Cosmetic Act (FFDCA). These Acts help protect consumers by assuring that food products are wholesome, not adulterated, and properly marked, labeled and packaged.

In order to assist the Secretaries in carrying out their responsibilities under the FMIA, PPIA, EPIA, and FFDCA, the NACMCF has been re-chartered. The Committee will be charged with advising and providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been adequately and appropriately processed.

Re-chartering of this Committee is necessary and in the public interest because of the need for external expert advice on the range of scientific and technical issues that must be addressed by the Federal sponsors in meeting their statutory responsibilities. The complexity of the issues to be addressed requires that the Committee meet at least twice per year.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of HHS. Because of their interest in the matters to be addressed by this Committee, advice on membership appointments will be requested from the Department of Commerce's National Marine Fisheries Service, the Department of Defense's Veterinary Service Activity, and the Centers for Disease Control and Prevention.

### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done at Washington, DC, on October 19, 2004.

**Elsa Murano,**

*Under Secretary for Food Safety.*

[FR Doc. 04–23824 Filed 10–21–04; 8:45 am]

**BILLING CODE 3410–DM–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on October 28, 2004, at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, CA 96143. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held October 28, 2004, beginning at 9 a.m. and ending at 4 p.m.

**ADDRESSES:** The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, CA 96143.

**FOR FURTHER INFORMATION CONTACT:** Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2642.

**SUPPLEMENTARY INFORMATION:** The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) Tahoe Working Group Report; (2) Federal Agency Southern Nevada Land Management Act Round 6 Project Proposals; and, (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: September 28, 2004.

**Maribeth Gustafson,**

*Forest Supervisor.*

[FR Doc. 04–23624 Filed 10–21–04; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eastern Idaho Resource Advisory Committee Caribou-Targhee National Forest, Idaho Falls, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Tuesday, November 30, 2004 in Idaho Falls for a business meeting. The meeting is open to the public.

**DATES:** The business meeting will be held on November 30, 2004 from 10 a.m. to 3 p.m.

**ADDRESSES:** The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

**FOR FURTHER INFORMATION CONTACT:** Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

**SUPPLEMENTARY INFORMATION:** The business meeting on November 30, 2004, begins at 10 a.m. at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include looking at funding for this upcoming year, briefed on project status from last years approved projects, and welcoming new members.

Dated: October 13, 2004.

**Jerry B. Reese,**

*Caribou-Targhee Forest Supervisor.*

[FR Doc. 04–23615 Filed 10–21–04; 8:45 am]

**BILLING CODE 3410–11–M**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* November 21, 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 July 16, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 42649) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below is 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 service to the Government.

2. The action will result in authorizing small entities to furnish the service 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 service proposed for addition to the Procurement List.

#### End of Certification

Accordingly, the following service is added to the Procurement List:

**Service**

*Service Type/Location:* Food Service, Armed Forces Retirement Home—Washington (AFRH–W), 3700 North Capitol Street, NW., Washington, DC.

*NPA:* Lakeview Center, Inc., Pensacola, Florida.

*Contract Activity:* Bureau of Public Debt, Parkersburg, West Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 04–23739 Filed 10–21–04; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed addition and deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed addition to and deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and services previously furnished by such agencies.

*Comments Must be Received on or Before:* November 21, 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.

#### Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each product will be required to procure the product 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 product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products 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 product 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 product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Product**

*Product/NSN:* Cup, Drinking, Styrofoam, M.R. 537.

*NPA:* The Oklahoma League for the Blind, Oklahoma City, Oklahoma.

*Contract Activity:* Defense Commissary Agency (DeCA), Fort Lee, Virginia.

#### Deletions

*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 may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product 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 product and services proposed for deletion from the Procurement List.

*End of Certification*

The following product and services are proposed for deletion from the Procurement List:

**Product**

*Product/NSN:* Paper, Looseleaf, Blank, 7530–00–286–5782.

*NPA:* Alabama Industries for the Blind, Talladega, Alabama.

*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York.

**Services**

*Service Type/Location:* Janitorial/ Custodial, U.S. Federal Building and Post Office, 104 West Magnolia, Bellingham, Washington.

*NPA:* Cascade Christian Services, Bellingham, Washington.

*Contract Activity:* General Services Administration, Northwest Region.

*Service Type/Location:* Janitorial/ Custodial, U.S. Post Office and Courthouse, Vicksburg, Mississippi.

*NPA:* Warren County Association for Retarded Citizens, Inc., Vicksburg, Mississippi.

*Contract Activity:* General Services Administration, Southeast Sunbelt Region.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 04–23740 Filed 10–21–04; 8:45 am]

**BILLING CODE 6353–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

*Bureau:* International Trade Administration.

*Title:* BISNIS FinanceLink.

*Agency Form Number:* ITA–4145P.

*OMB Number:* 0625–0231.

*Type of Request:* Regular Submission.

*Burden:* 8.

*Number of Respondents:* 50.

*Avg. Hours Per Response:* 10 minutes.

*Needs and Uses:* The International Trade Administration's Business Information Service for the Newly Independent States offers business intelligence and counseling to U.S. companies seeking to export or invest in the countries of the Former Soviet Union. One of the essential components of BISNIS's services is assisting companies in locating suitable financing for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all requests for a variety of reasons. FinanceLink is an internet-based service to facilitate contact between exporters and financing agencies. Exporters fill out a form giving relevant details about the desired transaction and submit it via Internet to BISNIS; BISNIS will, in turn, distribute the information collected to potential financing agencies. The intention is to provide a service that benefits both exporters and financing agencies.

*Affected Public:* Business or other for-profits.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit, voluntary.

*OMB Desk Officer:* David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax (202) 395–7285, within 30 days of publication of this **Federal Register** notice.

Dated: October 18, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–23641 Filed 10–21–04; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Assessment of Foreign Defense Procurement Practices.

*Agency Form Number:* N/A.

*OMB Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 450 hours.

*Average Time Per Response:* 3 hours per response.

*Number of Respondents:* 150 respondents.

*Needs and Uses:* This survey of U.S. defense contractors is needed to obtain information on foreign defense procurement practices abroad.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, 202–482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: October 18, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–23643 Filed 10–21–04; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Monthly Wholesale Trade Survey

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 21, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nancy Piesto, U.S. Census Bureau, Room 2632–FOB 3, Washington, DC 20223–6500, at (301) 763–2747.

**SUPPLEMENTARY INFORMATION**

#### I. Abstract

The Monthly Wholesale Trade Survey provides the only continuous measure of monthly sales, end-of-month inventories, method of inventory valuation, and inventories/sales ratios in the United States by selected kinds of business for merchant wholesalers. The Bureau of Economic Analysis (BEA) uses this information to improve the inventory valuation adjustments applied to estimates of the Gross Domestic Product (GDP). The Bureau of Labor

Statistics (BLS) uses the data as input to their Producer Price Indexes and in developing productivity measurements.

Estimates produced from the Monthly Wholesale Trade Survey are based on a probability sample and are published on the North American Industry Classification System (NAICS) basis. The sample design consists of small, medium, and large cases requested to report sales and inventories each month. The sample, consisting of about 4,000 wholesale businesses, is drawn from the Business Register, which contains all Employer Identification Numbers (EINs) and listed establishment locations. The sample is updated quarterly to reflect employer business ''births'' and ''deaths''; adding new employer businesses identified in the Business and Professional Classification Survey and deleting firms and EINs when it is determined they are no longer active.

The Monthly Wholesale Trade Survey will continue to generate its monthly report form through a print-on demand system. This system allows us to tailor the survey instrument to a specific industry. For example, it will print an additional instruction for a particular NAICS code. This system also reduces the time and cost of preparing mailout packages that contain unique variable data, while improving the look and quality of the products being produced.

## II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

## III. Data

*OMB Number:* 0607–0190.
*Form Number:* SM–42 (00).
*Type of Review:* Regular Submission.
*Affected Public:* Wholesale firms in the United States.
*Estimated Number of Respondents:* 4,000.
*Estimated Time Per Response:* 7 minutes.
*Estimated Total Annual Burden Hours:* 5,600 hours.
*Estimated Total Annual Cost:* The cost to the respondents for fiscal year 2005 is estimated to be $132,104 based on the annual response burden of 5,600 hours and an hourly salary of $23.59 to complete the form.
*Respondent's Obligation:* Voluntary.
*Legal Authority:* Title 13, United States Code, Section 182.

## IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 18, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–23642 Filed 10–21–04; 8:45 am]

BILLING CODE 3510–07–P

# DEPARTMENT OF COMMERCE

## International Trade Administration

## Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** October 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2002), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

## Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2005.

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Latvia: Steel Concrete Reinforcing Bars, A–449–804, Joint Stock Company Liepajas Metalurgs | 9/1/03–8/31/04 |
| Sweden: Stainless Steel Wire Rod, A–401–806, Fagersta Stainless AB | 9/1/03–8/31/04 |
| Taiwan: Stainless Steel Wire Rod, A–583–828, Walsin Lihwa Corporation Outokumpu Stainless [1] | 9/1/03–8/31/04 |
| Socialist Republic of Vietnam: Frozen Fish Fillets,[2] A–552–801 | 1/31/03–7/31/04 |
| The People's Republic of China: Freshwater Crawfish Tail Meat,[3] A–570–848 | 9/1/03–8/31/04 |
| China Kingdom International | |
| Qingdao Jinyongxiang Aquatic Foods Co., Ltd. | |
| Qingdao Xiyuan Refrigerate Food Co., Ltd. | |
| Weishan Zhenyu Foodstuff Co., Ltd. | |
| Yancheng Hi-King Agriculture Developing Co., Ltd. | |
| Yancheng Yaou Seafood Co., Ltd. | |

[1] For additional information, see the memorandum to the file for case A–583–828 regarding initiation of the 2003–2004 antidumping duty administrative review of Outokumpu Stainless. The memorandum is dated concurrently with this initiation notice.

[2] In the initiation notice that published on September 22, 2004 (69 FR 56745) the following footnote for frozen fish fillets from the Socialist Republic of Vietnam was inadvertently omitted—"If one of the above named companies does not qualify for a separate rate, all other exporters of frozen fish fillets from the Socialist Republic of Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

**Countervailing Duty Proceedings**

None.

**Suspension Agreements**

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 202), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(I).

Dated: October 18, 2004.

**Holly A. Kuga,**

*Senior Office Director, Office 4 for Import Administration.*

[FR Doc. E4–2802 Filed 10–21–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–801, A–428–801, A–475–801, A–401–801, A–412–801]**

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Sweden, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amended final results of antidumping duty administrative reviews.

**SUMMARY:** On April 26, 2004, and May 4, 2004, the United States Court of Appeals for the Federal Circuit dismissed appeals and lifted the stay of proceedings against the United States Court of International Trade's affirmations of the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy, Sweden, and the United Kingdom for the period of review May 1, 1995, through April 30, 1996, and from France, Germany, Italy, and Sweden for the period of review May 1, 1997, through April 30, 1998, respectively. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there are now final and conclusive court decisions in these actions, we are amending our final results of reviews and we will instruct U.S. Customs and Border Protection to liquidate entries subject to these reviews.

**EFFECTIVE DATE:** October 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 17, 1997, the Department of Commerce (the Department) published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043, as amended by *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Review,* 62 FR 61963 (November 20, 1997) (collectively *AFBs 7*), which covered the period of review (POR) May 1, 1995, through April 30, 1996. On July 1, 1999, the Department published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, as amended by *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy and Japan: Notice of Amended Final Results of Antidumping Duty Administrative Reviews,* 64 FR 47764 (September 1, 1999) (collectively *AFBs 9*), which covered the POR May 1, 1997, through April 30, 1998. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs).

In *FAG Italia S.p.A. v. United States*, 24 CIT 587 (2000) (*FAG*), *SKF USA Inc. and SKF Sverige AB v. United States*, 24 CIT 349 (2000) (*SKF*), *RHP Bearings Ltd. v. United States*, 110 F. Supp. 2d 1043 (CIT 2000) (*RHP I*), and *RHP Bearings Ltd. v. United States*, 132 F. Supp. 2d 1097 (CIT 2001) (*RHP II*), the United States Court of International Trade (CIT) ordered remands for *AFBs 7*. In *SKF USA Inc., SKF France S.A. and Sarma v. United States*, 116 F. Supp. 2d 1257 (CIT 2000) (*SKF France*), *SKF USA Inc. and SKF GmbH v. United States*, 94 F. Supp. 2d 1351 (CIT 2000) (*SKF Germany*), *SKF USA Inc. and SKF*

*Industrie S.p.A. v. United States*, 24 CIT 583 (2000) (*SKF Italy*), and *SKF USA Inc. and SKF Sverige AB v. United States*, 24 CIT 836 (2000) (*SKF Sweden*), the CIT ordered remands for *AFBs 9*.

As there are now final and conclusive court decisions with respect to companies affected by these remand orders directly, we are amending our final results of review for these companies and we will subsequently instruct U.S. Customs and Border Protection (CBP) to liquidate the relevant entries subject to these reviews.

*1. Remands for AFBs 7*

*a. FAG*

In *FAG*, the CIT remanded *AFBs 7* to the Department to address the following instructions: (1) annul all findings and conclusions made pursuant to the duty–absorption inquiry conducted for the subject reviews and (2) attempt to match U.S. sales to non–identical but similar home–market sales before resorting to constructed value when sales of identical merchandise have been found to be outside the ordinary course of trade. This remand affected FAG Italia S.p.A. and FAG Bearings Corporation (collectively FAG Italy) and SKF Industrie, RIV–SKF Officina de Villar Perosa, SKF Cuscinetti Specialti, SKF Cuscinetti, and RFT (collectively SKF Italy) directly with respect to the antidumping duty order on BBs from Italy for the POR May 1, 1995, through April 30, 1996.

On October 11, 2000, the Department filed its Remand Results with the CIT. On May 24, 2002, the U.S. Court of Appeals for the Federal Circuit (CAFC) remanded for further explanation the Department's use of different definitions of ''foreign like product'' in its normal value calculations; the CAFC affirmed the CIT's decision with respect to duty absorption. See *FAG Italia S.p.A. v. United States*, 291 F.3d 806 (CAFC 2002). On November 7, 2002, the Department filed its second remand determination explaining the definitions of ''foreign like product'' used in calculating normal value. On January 30, 2003, the CIT affirmed the remand results in their entirety. See *FAG Italia S.p.A. v. United States*, Consol. No. 97–11–01984, slip op. 03–12 (CIT 2003). FAG Italy and SKF Italy appealed the CIT's remand affirmation but later filed with the CAFC motions to sever and dismiss their appeals voluntarily. On February 17, 2004, the CAFC granted FAG Italy's unopposed motion to dismiss. On April 26, 2004, the CAFC granted SKF Italy's unopposed motion to dismiss and lifted the stay of proceedings.

*b. SKF*

In *SKF*, the CIT remanded *AFBs 7* to the Department to annul all findings and conclusions made pursuant to the duty–absorption inquiry conducted for the subject review. This remand affected SKF USA Inc. and SKF Sverige AB (collectively SKF Sweden) directly with respect to the antidumping duty order on BBs from Sweden for the POR May 1, 1995, through April 30, 1996.

On August 23, 2000, the Department filed its Remand Results with the CIT. On November 17, 2000, the CIT affirmed the Department's Remand Results in their entirety. See *SKF USA, Inc. and SKF Sverige AB v. United States*, 24 CIT 1310 (2000). SKF Sweden and the United States appealed the CIT's remand affirmation but later filed with the CAFC motions to sever and dismiss their appeals voluntarily. On April 26, 2004, the CAFC granted the United States' and SKF Sweden's unopposed motions to dismiss and lifted the stay of proceedings.

*c. RHP I and RHP II*

In *RHP I*, the CIT remanded *AFBs 7* to the Department to address the following instructions: (1) annul all findings and conclusions made pursuant to the duty–absorption inquiry conducted for the subject reviews; (2) attempt to match U.S. sales to non–identical but similar home–market sales before resorting to constructed value when sales of identical merchandise have been found to be outside the ordinary course of trade; and (3) recalculate Barden's dumping margin without regard to the results of the below–cost test. This remand affected the Barden Corporation (U.K.) Ltd., the Barden Corporation, and FAG Bearing Corporation (collectively Barden) and RHP Bearings Ltd., NSK Bearings Europe Ltd., and NSK Corporation (collectively NSK/RHP) directly with respect to the antidumping duty orders on BBs and CRBs from the United Kingdom for the POR May 1, 1995, through April 30, 1996.

On October 20, 2000, the Department filed its Remand Results with the CIT. On February 23, 2001, the CIT in *RHP II* affirmed the Department's Remand Results partially and remanded *AFBs 7* to the Department again with a new order to clarify the reasons behind its decision to conduct the below–cost test and to take any further action that it deems appropriate. On May 18, 2001, the Department filed its Remand Results with the CIT pursuant to the remand order in RHP II. On August 20, 2001, the CIT affirmed the Department's Remand Results in their entirety. See *RHP Bearings Ltd. v. United States*, Consol. No. 97–11–01983, slip op. 01–106 (CIT 2001). Barden, NSK/RHP, Timken US Corporation (Timken), and the United States appealed the CIT's remand affirmation but later filed with the CAFC motions to sever and dismiss their appeals voluntarily. On February 17, 2004, the CAFC granted Barden's, NSK/RHP's, and Timken's motions to dismiss. On April 26, 2004, the CAFC granted the United States' motion to dismiss and lifted the stay of proceedings.

*2. Remands for AFBs 9*

In *SKF France, SKF Germany, SKF Italy, and SKF Sweden*, the CIT remanded *AFBs 9* to the Department to annul all findings and conclusions made pursuant to the duty–absorption inquiry conducted for the subject reviews. These four remand orders affected, in the respective order, SKF Compagnie d'Applications Mecaniques, S.A. (Clamart), ADR, and SARMA (collectively SKF France), SKF GmbH, SKF Service GmbH, and Steyr Walzlager (collectively SKF Germany), SKF Italy, and SKF Sweden directly with respect to the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy, and Sweden for the POR May 1, 1997, through April 30, 1998.

The Department filed its Remand Results for *SKF France* and *SKF Sweden* on November 22, 2000, *SKF Germany* on June 20, 2000, and SKF Italy on October 10, 2000, with the CIT. The CIT affirmed the Department's Remand Results for *SKF France*[1] *and SKF Sweden*[2] on January 30, 2001, *SKF Germany*[3] on August 18, 2000, and *SKF Italy*[4] on December 15, 2000, in their entirety.

The CIT's remand affirmations in *SKF France, SKF Germany, SKF Italy, and SKF Sweden* were appealed by the plaintiffs, *i.e.*, SKF France, SKF Germany, SKF Italy, and SKF Sweden, respectively. Timken and the United States appealed in all four cases. All parties later filed with the CAFC motions to sever and dismiss their appeals voluntarily. On February 17, 2004, the CAFC granted SKF France's, SKF Italy's, SKF Sweden's, and Timken's motions to dismiss appeals in *SKF France, SKF Italy, and SKF Sweden*. On February 18, 2004, the CAFC granted

[1] SKF USA Inc., SKF France S.A. and Sarma v. United States, No. 99-08-00475, slip op. 01-12 (CIT 2001).

[2] SKF USA Inc. and SKF Sverige AB v. United States, No 99-08-00470, slip op. 01-11 (CIT 2001).

[3] SKF USA Inc. and SKF GmbH v. United States, 126 F. Supp. 2d. 567 (CIT 2000).

[4] SKF USA Inc. and SKF Industrie S.p.A. v. United States, 24 CIT 1393 (2000).

SKF Germany's and Timken's motions to dismiss appeals in *SKF Germany*. On April 26, 2004, the CAFC granted the United States' motion to dismiss appeals in all four cases and lifted the stay of proceedings.

**Assessment of Duties**

The remands for *AFBs 7* had no effect on weighted–average margins or duty–assessment rates for FAG Italy, SKF Italy, SKF Sweden, Barden, and NSK/RHP. The remands for *AFBs 9* had no effect on weighted–average margins or duty–assessment rates for SKF France, SKF Germany, SKF Italy, and SKF Sweden.

Accordingly, the Department will determine and CBP will assess appropriate antidumping duties on entries of the subject merchandise produced by the affected companies. Individual differences between U.S. price and foreign market value may vary from the percentages published. The Department has disclosed or will disclose assessment instructions to the parties in advance. The Department will issue assessment instructions to CBP within 15 days of publication of these amended final results of reviews.

The CIT remanded *AFBs 7* and *AFBs 9* to the Department to annul all findings and conclusions made pursuant to the duty–absorption inquiries it conducted in both segments of proceeding. The Department hereby complies with the remand as directed by the CIT and annuls all findings and conclusions made pursuant to its duty–absorption inquiries conducted for the subject reviews with respect to the following companies:

| Segments | Country | Company | Class or Kind of Merchandise |
|---|---|---|---|
| AFBs 7 | Italy | FAG Italy | BBs |
| | | SKF Italy | BBs |
| | Sweden | SKF Sweden | BBs |
| | United Kingdom | Barden | BBs |
| | | NSK/RHP | BBs, CRBs |
| AFBs 9 | France | SKF France | BBs |
| | Germany | SKF Germany | BBs, CRBs, SPBs |
| | Italy | SKF Italy | BBs |
| | Sweden | SKF Sweden | BBs, CRBs |

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–23719 Filed 10–21–04; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–853]**

### Bulk Aspirin From the People's Republic of China: Amended Notice of Court Decision and Suspension of Liquidation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 24, 2004, the United States Court of International Trade issued an amendment to its order, clarifying a June 29, 2004, decision regarding liquidation of entries of bulk aspirin from the People's Republic of China. Consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States,* 893 F.2nd 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public of the Court's amendment.

**DATES:** Effective October 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1279.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 29, 2004, the United States Court of International Trade (''CIT'') issued its decision to invalidate certain sets of liquidation instructions issued by the Department of Commerce (''the Department'') in the antidumping proceeding covering entries of bulk aspirin from the People's Republic of China (''PRC''). *See Jilin Henghe Pharmaceutical Co. and Jilin Pharmaceutical USA* v. *United States,* Consol. Court No. 04–00151, Slip. Op. 04–77 (CIT 2004) (''*Jilin Henghe*'').

Pursuant to *Timken,* on July 9, 2004, the Department published a notice of the CIT's decision in the **Federal Register**. *See Bulk Aspirin from the People's Republic of China: Notice of Court Decision and Suspension of Liquidation,* 69 FR 41458 (July 9, 2004).

On August 24, 2004, the CIT issued an amendment to its order to clarify that entries of bulk aspirin that (1) were manufactured and exported to the United States by Jilin Henghe Pharmaceutical Co. Ltd. (''Jilin'') and imported by Jilin Pharmaceutical USA (''Jilin USA''); and (2) were entered, or withdrawn from warehouse, for consumption during the time period of July 1, 2002, through September 29, 2002, or entered pursuant to Customs number D09–0929517–8, shall be liquidated in accordance with the Court's decision in *Rhodia Inc.* v. *United States,* 240 F. Supp. 2d 1247 (CIT 2002).

*Timken Notice*

In its decision in *Timken,* the Federal Circuit held that, pursuant to section 516A(c)(1) and (e) of the Tariff Act of 1930 (''the Act''), the Department must publish notice of a decision of the CIT which is not in harmony with the Department's determination. The CIT's decision in *Jilin Henghe* was not in harmony with the Department's *Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision: Bulk Aspirin from the People's Republic of China,* 68 FR 75208 (December 30, 2003), *Notice of Amended Final Results of Antidumping Duty Administrative Review: Bulk Aspirin from the People's Republic of China,* 68 FR 12036 (March 13, 2003), or *Notice of Amended Final Results of Antidumping Duty Administrative Review: Bulk Aspirin from the People's Republic of China,* 68 FR 54890 (September 19, 2003). Therefore, publication of this notice fulfills the statutory obligation.

*Suspension of Liquidation*

This notice will serve to continue the suspension of liquidation pending a final decision by the Federal Circuit. The Department will instruct Customs and Border Protection to continue to suspend entries of bulk aspirin from the PRC that: (1) Were produced and exported by Jilin, and imported by Jilin USA; (2) were entered, or withdrawn from warehouse, for consumption from July 1, 2002, through September 29, 2002, or entered pursuant to Customs number D09–0929517–8. The Department will issue liquidation instructions covering these entries when there is a final decision by the Federal Circuit.

Dated: October 18, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–2803 Filed 10–21–04; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–802]**

### Gray Portland Cement and Clinker From Mexico: Notice of Extension of the Time Limit for the Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico until December 20, 2004. This extension applies to one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2002, through July 31, 2003.

**DATES:** Effective October 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Frank or Hermes Pinilla, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0090 and (202) 482-3477, respectively.

*Background*

On September 30, 2003, the Department of Commerce (the Department) published in the **Federal Register** the *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review* (68 FR 56262) in which it initiated an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. On April 28, 2004, the Department published a notice extending the date for issuing the preliminary results of this review until June 14, 2004. See *Gray Portland Cement and Clinker From Mexico: Notice of Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 23172. On June 22, 2004, the Department published in the **Federal Register** the preliminary results of this administrative review. See *Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 69 FR 34647.

*Extension of Time Limit for Final Results*

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an antidumping duty administrative review within 120 days of the date on which the preliminary results are published. Currently, the due date for the final results is October 20, 2004. The Act also provides that the Department may extend the 120-day period to 180 days, if it determines that it is not practicable to complete the review within the foregoing time period.

This review involves complex factual and legal issues regarding sales of a new type of cement, and the Department needs additional time to consider the issue. For this reason, the Department has determined that it is not practicable to complete the final results within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for completion of the final results by 60 days.

The final results of review are now due no later than December 20, 2004. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 18, 2004.

**Jeffrey A. May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E4–2804 Filed 10–21–04; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of application.

**SUMMARY:** Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be marked clearly and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 04–00004.'' A summary of the application follows.

**Summary of the Application**

*Applicant:* AmRus Ventures, Inc., 3834 Ednor Road, Baltimore, Maryland 21218.

*Contact:* Dwayne L. Rodeheaver, President, Telephone: (410) 585–4509.

*Application No.:* 04–00004.

*Date Deemed Submitted:* October 15, 2004.

*Members (in Addition to Applicant):* None.

AmRus Ventures, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

**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**

AmRus Ventures, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotion and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in the Export Markets;
4. Enter into exclusive or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide the Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in the Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-to-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.

**Definition**

1. ''Supplier'' means a person who produces, provides, or sells Products, Service and/or Technology Rights.

Dated: October 18, 2004.

**Jeffrey Anspacher,**

*Director, Export Trading Company Affairs.*

[FR Doc. E4–2808 Filed 10–21–04; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100404A]**

### Marine Mammals; File No. 1072–1771

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Dr. Colleen Reichmuth Kastak, Long Marine Laboratory, Institute of Marine Science, University of California at Santa Cruz, 100 Schaffer Road, Santa Cruz, CA 95060, has applied in due form for a permit to conduct research on captive pinnipeds.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before November 22, 2004.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1072–1771.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Tammy Adams, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The proposed research involves a continuation of studies designed to evaluate hearing and visual sensitivity, memory, and learning capabilities of up to seven captive pinnipeds (three California sea lions, *Zalophus californianus*; two Pacific harbor seals, *Phoca vitulina*; and two Northern elephant seals, *Mirounga angustirostris*). Animals would be trained using positive reinforcement and would voluntarily participate in up to three experimental sessions per day, up to seven days per week annually at Long Marine Laboratory. This research would improve knowledge of pinniped sensory adaptations, examine mechanisms for acquiring and processing sensory information, and develop procedures for rapidly and humanely studying marine mammal hearing and the effects of anthropogenic noise. These efforts would support research priorities for marine mammals that have been identified by the National Research Council. The permit has been requested for a 5–year period. In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 19, 2004.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–23732 Filed 10–21–04; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Business Board; Notice of Advisory Committee Meeting

**AGENCY:** Department of Defense, DoD.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Business Board (DBB) will meet in open session on Wednesday, November 17, 2004, at the Pentagon, Washington, DC from 1000 until 1145. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Acquisition, Human Resources, and Financial Management related task groups will deliberate on their preliminary findings and recommendations related to tasks assigned earlier this year.

**DATES:** Wednesday, November 17, 2004, 1000 to 1145 hrs.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to attend the meeting must contact the Defense Business Board no later than Wednesday, November 10th for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Wednesday, November 10th to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty minutes.

The DBB may be contacted at: Defense Business Board, 1100 Defense Pentagon, room 2E314, Washington, DC 20301–1100, via e-mail at *DBB@osd.pentagon.mil,* or via phone at (703) 614–8586.

**Jeannette Owings-Ballard,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–23675 Filed 10–21–04; 8:45 am]

**BILLING CODE 5001–06–M**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Proposed Collection; Comment Request

**AGENCY:** Deputy Chief of Staff, G–1 (DAPE–TT), DOD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 21, 2004.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Department of the Army, U.S. Military Academy, Institutional Research & Analysis, Office of Policy, Planning & Analysis, ATTN: (Dr. William Burke), West Point, New York 10966–5000. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 325–8433.

*Title and OMB Number:* West Point Engineering Graduates Surveys; OMB Control Number 0702–0116.

*Needs and Uses:* An assessment of perceptions of graduates on the effectiveness of the U.S. Military Academy programs and curricula is needed for periodic accreditation by the Accreditation Board for Engineering and Technology. The information collected will be used to evaluate programs/curricula and make changes deemed advisable.

*Affected Public:* Individual or Households.

*Annual Burden Hours:* 218.

*Number of Respondents:* 519.

*Responses per Respondent:* 1.

*Average Burden per Response:* 25 minutes.

*Frequency:* On occasion (Every Three Years).

**SUPPLEMENTARY INFORMATION:**

### Summary of Information Collection

The information will be collected via seven surveys, each with content appropriate to graduates of engineering and engineering related courses of study at the U.S. Military Academy. The surveys will go to graduates currently serving as officers in the U.S. Army and to graduates not currently serving. Respondents will be allowed to choose between completing a mailed survey or an Internet-based survey.

Dated: October 15, 2004.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–23676 Filed 10–21–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Intent To Prepare a Draft Environmental Impact Statement for Potential Multipurpose Projects for Ecosystem Restoration, Flood Damage Reduction, and Recreation Development Within and Along the Clear and West Forks of the Trinity River in Fort Worth, Tarrant County, TX

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice; amendment.

**SUMMARY:** The Fort Worth District, U.S. Army Corps of Engineers hereby announces its intent to modify the study area to be evaluated during the preparation of a Draft Environmental Impact Statement (DEIS) for the potential multipurpose projects for ecosystem restoration, flood damage reduction, and recreation development within and along the portion of the Trinity River located in Forth Worth, Tarrant County, TX, as published in the **Federal Register** on October 14, 2002 (67 FR 63900).

A resolution by the United States Senate Committee on Environment and Public Works dated April 22, 1988, requested that the Board of Engineers review the report of the Chief of Engineers on the Trinity River and Tributaries, Texas, House Document No. 276, Eighty-Ninth Congress, and other pertinent reports, with a view to determining the advisability of modifying the recommendations contained therein, with particular reference to providing improvements in the interest of flood protection, environmental enhancement, water quality, recreation, and other allied purposes in the Upper Trinity River Basin with specific attention on the Dallas-Fort Worth Metroplex. An initial assessment based on the resolution guidance indicates a Federal interest in continuing with more detailed studies for these purposes and in accordance with the National Environmental Policy Act (NEPA), the public was informed in October 2002 of the intent to prepare a DEIS. The notice identified a study area that was bound by Interstate Highway 30 on the Clear Fork, Rockwood Park on the upstream end of the West Fork, Northeast 28th Street on Marine Creek, a tributary of the West Fork, and Riverside Drive on the downstream end of the West Fork.

A public scoping and project studies have progressed, it has been determined that the study area for consideration of project purposes should be expanded further upstream of Rockwood Park on the West Fork of the Trinity River to include the additional area between Rockwood Park and U. S. Highway 183 (approximately 793 acres). Studies of the expanded area will concentrate on identifying new plans to evaluate flood damage reduction potential and/or prevent future damages through establishing hydraulic and hydrologic mitigation through new and creative methodologies that reduce environmental impact and provide for improved aesthetic properties. Expansion of the study area also provides opportunities for ecosystem restoration, including increased connectivity of existing high resource value environmental and recreational opportunities between isolated natural resource bases along the study area.

**FOR FURTHER INFORMATION CONTACT:** Dr. Rebecca Griffith, CESWF–PER–P, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, 819 Taylor Street, Fort Worth, TX 76102–0300, phone (817) 886–1820, fax (817) 886–6498.

**SUPPLEMENTARY INFORMATION:** No additional public meetings have been scheduled as a result of the decision to expand the study area, as public participation during the process was a factor in determining to expand the study area. However, all affected Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties are hereby invited to provide scoping comments that should be considered during the remainder of the feasibility study. The public will be given the opportunity to review the DEIS during the 45-day public comment period. Prior to the close of the comment period, any person may make a written request for a public meeting, setting forth the particular reasons for the request. The District Engineer will then determine whether the issues raised are substantial and should be considered in his decision. If a public meeting is warranted, all known interested parties will be notified of the time, date, and location of such a meeting in the local news media. Release of the DEIS for public comment is scheduled for March 2005. The exact release date, once established, will be announced in the local news media.

Dated: October 14, 2004.

**John R. Minahan,**

*Colonel, Corps of Engineers, Commanding.*

[FR Doc. 04–23681 Filed 10–21–04; 8:45 am]

BILLING CODE 3710–20–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 10. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 31, 2004.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5)

respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 18, 2004.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Institute of Education Sciences**

*Type of Review:* Reinstatement.

*Title:* IEA Progress in International Reading Literacy Study (PIRLS)

*Abstract:* PIRLS 2006 is a multinational project coordinated by the International Association for the Evaluation of Educational Achievement. Approximately 46 countries will participate in this analysis of children's reading literacy and the factors association with reading acquisition. Children in grade 4 in the U.S. will be administered a reading test and the children, their teachers, and school administrators will also complete questionnaires about factors related to the development of reading literacy.

*Additional Information:* This is a request for emergency OMB clearance for the sampling and recruitment activities for the field test for the international surveys, Progress in International Reading Literacy Study (PIRLS) (1850–0755). Clearance is requested by November 10. The emergency clearance is necessary in order to comply with the international standard for field testing prior to full scale survey work. If this work sampling and recruitment of school participants doesn't commence in November it will delay the field test itself. This would potentially result in not being able to carry out the field test this school year. The main study itself is scheduled for next school year, 2005/2006. Because of the requirement for field testing, the potential harm is that the U.S. may not be able to participate in the study. The U.S. is one of the major participating and supporting countries involved in the international assessment activities represented by the PIRLS. International activities like the PIRLS are mandated under the legislation authorizing the National Center for Education Statistics, the Education Sciences Reform Act of 2002, HR 3801. The field test survey and assessment activities themselves will be conducted under regular clearance for which clearance packages have also been submitted.

*Frequency:* One time.

*Affected Public:* Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden: Responses*—875. *Burden Hours*—1,082.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2632. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2796 Filed 10–21–04; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

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**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 1, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 21, 2004.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 18, 2004.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Institute of Education Sciences**

*Type of Review:* Reinstatement.

*Title:* Program for International Student Assessment (PISA).

*Abstract:* The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-year-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focuses on reading literacy; mathematics literacy will be the focus in 2003, and science literacy in 2006. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

*Additional Information:* This is a request for emergency OMB clearance for the sampling and recruitment activities for the field test for the international survey, Program for International Student Assessment (PISA) (1850–0645). Clearance is requested by November 10. The emergency clearance is necessary in order to comply with the international standard for field testing prior to full scale survey work. If this work sampling and recruitment of school participants doesn't commence in November it will delay the field test itself. This would potentially result in not being able to carry out the field test this school year. The main study itself is scheduled for next school year, 2005/2006. Because of the requirement for field testing, the potential harm is that the U.S. may not be able to participate in the study. The U.S. is one of the major participating and supporting countries involved in the international assessment activities represented by the PISA. International activities like the PISA are mandated under the legislation authorizing the National Center for Education Statistics, the Education Sciences Reform Act of 2002, HR 3801. The field test survey and assessment activities themselves will be conducted under regular clearance for which clearance packages have also been submitted.

*Frequency:* One time.

*Affected Public:* Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 875.

*Burden Hours:* 1,082.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2632. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at her e-mail address *Kathy_Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2797 Filed 10–21–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Federal Family Education Loan Program

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice of interest rates for the Federal Family Education Loan Program for the period July 1, 2004 through June 30, 2005.

**SUMMARY:** The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the Federal Family Education Loan (FFEL) Program for the period July 1, 2004 through June 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Don Watson, U.S. Department of Education, room 114I2, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008.

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:**

**General**

Under title IV, part B of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C.1071, *et seq.,* most loans made to student and parent borrowers under the FFEL Program have variable interest rates.

The formulas for determining the interest on variable rate FFEL Program loans are established in section 427A of the HEA (20 U.S.C. 1077a).

The interest rates on variable-rate loans are determined annually and apply to the following 12-month period beginning July 1 and ending June 30.

As described below, interest rate caps apply to most FFEL Program loans.

FFEL interest rate formulas use the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before June 1 of each year plus a statutorily established add-on to determine the variable interest rate for—

- FFEL fixed-rate Stafford loans first disbursed before October 1, 1992 that have been converted to variable-rate loans;
- All FFEL Subsidized and Unsubsidized Stafford Loans first disbursed on or after October 1, 1992;
- FFEL PLUS loans first disbursed on or after July 1, 1998; and
- FFEL Consolidation Loans for which the Consolidation Loan application was received by the lender on or after November 13, 1997 and before October 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 24, 2004, which is used to calculate the interest rates for the one-year period beginning on July 1, 2004, is 1.066 percent, which is rounded to 1.07 percent.

For FFEL PLUS loans first disbursed before July 1, 1998, interest rates are calculated based on the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26.

The weekly average of the 1-year constant maturity Treasury yield for the last calendar week ending on or before June 26, 2004 is 2.16 percent.

**Interest Rates for ''Converted'' Variable-Rate FFEL Stafford Loans**

1. Under section 427A(i)(7) of the HEA (20 U.S.C. 1077a (i)(7)) loans that were originally made with a fixed interest rate of eight percent with an increase to ten percent four years after commencement of the repayment period were converted to a variable interest rate that may not exceed 10 percent: The interest rate for these loans for the

period from July 1, 2004, through June 30, 2005, is 4.32 percent (1.07 percent plus 3.25 percent equals 4.32 percent).

2. Loans with fixed interest rates of seven percent, eight percent, nine percent, or eight percent with an increase to ten percent four years after commencement of the repayment period, that were subject to the provisions of section 427A(i)(3) of the HEA (20 U.S.C. 1077a(i)(3)) and were converted to variable-rate loans—the interest rate may not exceed seven percent, eight percent, nine percent, or ten percent, respectively: The interest rate for the period from July 1, 2004, through June 30, 2005, is 4.17 percent (1.07 percent plus 3.1 percent equals 4.17 percent).

**Interest Rates for Variable-Rate FFEL Stafford Loans**

1. FFEL Stafford loans made to ''new'' borrowers for which the first disbursement was made (a) on or after October 1, 1992, but before July 1, 1994, or (b) on or after July 1, 1994, for a period of enrollment ending before July 1, 1994 (*i.e.* a late disbursement)—the interest rate may not exceed 9 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 4.17 percent (1.07 percent plus 3.1 percent equals 4.17 percent).

2. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for periods of enrollment that include or begin on or after July 1, 1994, for which the first disbursement was made on or after July 1, 1994, but before July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 4.17 percent (1.07 percent plus 3.1 percent equals 4.17 percent).

3. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, on or after July 1, 1995, but before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, or deferment period: The interest rate for the period from July 1, 2004, through June 30, 2005, is 3.57 percent (1.07 percent plus 2.5 percent equals 3.57 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2004, through June 30, 2005, is 4.17 percent (1.07 percent plus 3.1 percent equals 4.17 percent).

4. FFEL Stafford loans, first disbursed on or after July 1, 1998, but before July 1, 2005—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period from July 1, 2004, through June 30, 2005, is 2.77 percent (1.07 percent plus 1.7 percent equals 2.77 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2004, through June 30, 2005, is 3.37 percent (1.07 percent plus 2.3 percent equals 3.37 percent).

**Interest Rates for FFEL PLUS and FFEL Supplemental Loans for Students (SLS) Loans**

1. Variable-rate FFEL PLUS and FFEL SLS loans first disbursed before October 1, 1992—the interest rate may not exceed 12 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 5.41 percent (2.16 percent plus 3.25 percent equals 5.41 percent).

2. FFEL SLS loans first disbursed on or after October 1, 1992, for a period of enrollment beginning before July 1, 1994—the interest rate may not exceed 11 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 5.26 percent (2.16 percent plus 3.1 percent equals 5.26 percent).

3. FFEL PLUS loans first disbursed on or after October 1, 1992, but before July 1, 1994—the interest rate may not exceed 10 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 5.26 percent (2.16 percent plus 3.1 percent equals 5.26 percent).

4. FFEL PLUS loans first disbursed on or after July 1, 1994, but prior to July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 5.26 percent (2.16 percent plus 3.1 percent equals 5.26 percent).

5. FFEL PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2005—the interest rate may not exceed 9 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 4.17 percent (1.07 percent plus 3.1 percent equals 4.17 percent).

**Interest Rates for FFEL Consolidation Loans**

1. FFEL Consolidation loans for which the consolidation loan was made by the lender before July 1, 1994—the interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent, but may not be less than 9 percent.

2. FFEL Consolidation loans for which the consolidation loan was made by the lender on or after July 1, 1994, and before November 13, 1997—the interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

3. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after November 13, 1997, and before October 1, 1998—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2004, through June 30, 2005, is 4.17 percent (1.07 percent plus 3.1 percent equals 4.17 percent).

4. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after October 1, 1998, and before July 1, 2005—the interest rate may not exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher ⅛ of one percent.

5. If a portion of a Consolidation loan is attributable to a loan made under subpart I of part A of title VII of the Public Health Service Act, the maximum interest rate for that portion of a Consolidation loan is determined annually, for each 12-month period beginning on July 1 and ending on June 30. The interest rate equals the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending prior to July 1, plus 3 percent. For the quarter ending prior to July 1, 2003, the average 91-day Treasury bill rate was 1.119 percent (rounded to 1.12 percent). The maximum interest rate for the period from July 1, 2004, through June 30, 2005, is 4.12 percent, which is rounded (1.12 percent plus 3.0 percent equals 4.12 percent).

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**Program Authority:** 20 U.S.C. 1087 *et seq.*

Dated: October 19, 20, 2004.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. E4–2805 Filed 10–21–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### International Research and Studies Program; Notice Inviting Application for New Awards for Fiscal Year (FY) 2005

**AGENCY:** Department of Education.

**ACTION:** Correction.

**SUMMARY:** On September 23, 2004, a notice inviting applications for new awards under the Office of Postsecondary Education; International Research and Studies Program was published in the **Federal Register** (69 FR 57011 through 57014). Under Application and Submission Information on page 57012, in column 2, ''Page Limit'' section, second sentence, we included the incorrect page limit. The second sentence of the ''Page Limit'' section reads ''You must limit the narrative to the equivalent of 25 pages using the following standards''. This notice will correct that sentence to read, ''You must limit the narrative to the equivalent of 30 pages using the following standards''.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jose L. Martinez, U.S. Department of Education, 1990 K Street, NW., Room 6010, Washington, DC 20006–8521. Telephone: (202) 502–7635 or by e-mail: *jose.martinez@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.

**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 Abobe 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.*

**Sally L. Stroup,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 04–23687 Filed 10–21–04; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF EDUCATION

### National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

**ACTION:** Notice of meeting.

**SUMMARY:** This notice provides the schedule and a summary of the agenda for an upcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act.

**DATE AND TIME:** November 4, 2004, 12:30 to 4:30 p.m.

**ADDRESSES:** Renaissance Washington, DC Hotel, 999 Ninth Street, NW., Washington, DC 20001. Telephone: (202) 898–9000.

**FOR FURTHER INFORMATION CONTACT:** Donald Fischer, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544; telephone (202) 502–7500; e-mail *donald.fischer@ed.gov.*

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in the preceding paragraph as soon as possible.

**SUPPLEMENTARY INFORMATION:** The National Board of the Fund for the Improvement of Postsecondary Education is established under section 742 of the Higher Education Act of 1965 (20 U.S.C. 1138a). The Board is authorized to advise the Director of the Fund and the Assistant Secretary for Postsecondary Education on (1) priorities for the improvement of postsecondary education, including recommendations for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice; and (2) the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund.

On Thursday, November 4, 2004, from 12:30 to 4:30 p.m., the Board will meet in open session. The proposed agenda for the meeting will include discussions of the Fund's programs and special initiatives. A special presentation will be made on a U.S.-Brazil Consortia Program project.

Records are kept of all Board proceedings and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 6th Floor, 1990 K Street, NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

**Sally L. Stroup,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. E4–2801 Filed 10–21–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### William D. Ford Federal Direct Loan Program

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice of interest rates for the William D. Ford Federal Direct Loan Program for the period July 1, 2004 through June 30, 2005.

**SUMMARY:** The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program for the period July 1, 2004 through June 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Don Watson, U.S. Department of Education, room 114I2, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008.

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:**

Section 455(b) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1087e(b), provides formulas for determining the interest rates charged to borrowers for loans made under the Direct Loan Program including Federal Direct Stafford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans) and Federal Direct Consolidation Loans (Direct Consolidation Loans).

The Direct Loan Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the Direct Loan Program have variable interest rates that change each year. The variable interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one-year and ending June 30 of the following year.

In the case of some Direct Consolidation Loans, the interest rate is determined by the date on which the Direct Consolidation Loan application was received. Direct Consolidation Loans for which the application was received on or after February 1, 1999 have a fixed interest rate based on the weighted average of the loans that are consolidated rounded up to the nearest higher ⅛ of one percent.

Pursuant to section 455(b) of the HEA, 20 U.S.C. § 1087e(b), the Direct Loan interest rate formulas use the bond equivalent rates of the 91-day Treasury bills at the final auction held before June 1 of each year plus a statutory add-on percentage to determine the variable interest rate for all Direct Subsidized Loans and Direct Unsubsidized Loans; Direct Consolidation Loans for which the application was received on or after July 1, 1998 and before February 1, 1999; and Direct PLUS Loans disbursed on or after July 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 24, 2004, which is used to calculate the interest rates on these loans, is 1.066 percent, which is rounded to 1.07 percent.

In addition, pursuant to section 455(b) of the HEA, 20 U.S.C. 1087e(b), as amended by Public Law 106–554, the Consolidated Appropriations Act 2001, the interest rate for Direct PLUS Loans that were disbursed on or after July 1, 1994 and on or before July 1, 1998, is calculated based on the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus a statutory add-on percentage.

The last calendar week ending on or before June 26 2004, began on June 20, 2004 and ended on June 26, 2004. On June 25, 2004, the Board of Governors of the Federal Reserve System published the 1-year constant maturity Treasury yield average as 2.16 percent.

Below is specific information on the calculation of the interest rates for the Direct Loan Program. This information is listed in order by the date a loan was first disbursed or by the date that the Consolidation Application was received.

In addition, a summary of the interest rates that are effective for the period July 1, 2004 through June 30, 2005, is included on charts at the end of this notice. These charts are organized by loan type. In each chart, the interest rates are arranged by the date a loan was first disbursed or by the date that the consolidation application was received.

**For Direct Loan Program Loans First Disbursed on or After July 1, 1994, and Before July 1, 1995**

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1994, and before July 1, 1995, is 4.17 percent during all periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were first disbursed on or after July 1, 1994 and before July 1, 1995, is 5.26 percent for all periods.

**For Direct Loan Program Loans First Disbursed on or After July 1, 1995, and Before July 1, 1998**

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.5 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1995, and before July 1, 1998, is 3.57 percent during in-school, grace, and deferment periods and 4.17 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were first disbursed on or after July 1, 1995 and before July 1, 1998, is 5.26 percent during all periods.

**For Direct Loans First Disbursed on or After July 1, 1998, and Before October 1, 1998**

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1998 and before October 1, 1998, is 2.77 percent during in-school, grace, and deferment periods and 3.37 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1998, and before October 1, 1998, is 4.17 percent during all periods.

**For Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans First Disbursed on or After October 1, 1998, and Before July 1, 2005**

The interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans that were disbursed after July 1, 1998, and before July 1, 2005, is 2.77 percent during in-school, grace, and deferment periods and 3.37 percent during all other periods.

The interest rate for Direct PLUS Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct PLUS Loans that were disbursed after July 1, 1998, and before July 1, 2005, is 4.17 percent during all periods.

**For Direct Consolidation Loans First Disbursed on or After October 1, 1998 and for Which the Application was Received Before October 1, 1998**

The interest rate for Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1998 and before October 1, 1998, is 2.77 percent during in-school, grace, and deferment periods and 3.37 percent during all other periods.

The interest rate for Direct PLUS Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1998, and before October 1, 1998, is 4.17 percent during all periods.

**For Direct Consolidation Loans for Which the Application was Received on or After October 1, 1998, and Before February 1, 1999**

The interest rate for Direct Consolidation Loans for which the application was received on or after October 1, 1998 and before February 1, 1999 is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2004, to June 30, 2005, the interest rate for Direct Consolidation Loans for which the application was received on or after October 1, 1998 and before February 1, 1999, is 3.37 percent during all periods.

**For Direct Consolidation Loans for Which the Application was Received on or After February 1, 1999, and Before July 1, 2005**

The interest rate for Direct Consolidation Loans for which the application was received on or after February 1, 1999, and before July 1, 2005, is the lesser of 8.25 percent, or the weighted average of the loans consolidated, rounded to the nearest higher 1/8 of one percent.

**Electronic Access to This Document**

You may review 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/federegister.*

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.*

**Program Authority:** 20 U.S.C. 1087 *et seq.*

Dated: October 19, 2004.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

**BILLING CODE 4001–01–P**

**Federal Direct Subsidized Loans and Federal Direct Unsubsidized Loans**

| | Status | Treasury Instrument | | Add-on | | Interest Rate for 7/1/2004 through 6/30/2005 | Maximum Interest Rate |
|---|---|---|---|---|---|---|---|
| Loans with first disbursement date between 7/1/1994 and 6/30/1995 | Any status | 91-day T-bill 1.07 | + | 3.1 | = | 4.17 | 8.25 |
| Loans with first disbursement date between 7/1/1995 and 6/30/1998 | Repayment or forbearance | 91-day T-bill 1.07 | + | 3.1 | = | 4.17 | 8.25 |
| | in-school, grace, or deferment | 91-day T-bill 1.07 | + | 2.5 | = | 3.57 | 8.25 |
| Loans with first disbursement date on or after 7/1/1998 | Repayment or forbearance | 91-day T-bill 1.07 | + | 2.3 | = | 3.37 | 8.25 |
| | in-school, grace, or deferment | 91-day T-bill 1.07 | + | 1.7 | = | 2.77 | 8.25 |

**Federal Direct Subsidized Consolidation Loans and Federal Direct Unsubsidized Consolidation Loans**

| | Status | Treasury Instrument | Add-on | | | Interest Rate for 7/1/2004 through 6/30/2005 | Maximum Interest Rate |
|---|---|---|---|---|---|---|---|
| Loans with first disbursement date between 7/1/1994 and 6/30/1995 | Any status | 91-day T-bill 1.07 | + | 3.1 | = | 4.17 | 8.25 |
| Loans with first disbursement date between 7/1/1995 and 6/30/1998 | Repayment or forbearance | 91-day T-bill 1.07 | + | 3.1 | = | 4.17 | 8.25 |
| | in-school, grace, or deferment | 91-day T-bill 1.07 | + | 2.5 | = | 3.57 | 8.25 |
| Loans with first disbursement date between 7/1/1998 and 9/30/1998 and loans with first disbursement date on or after 10/1/1998 for which the application was received before 10/1/1998 | Repayment or forbearance | 91-day T-bill 1.07 | + | 2.3 | = | 3.37 | 8.25 |
| | in-school, grace, or deferment | 91-day T-bill 1.07 | + | 1.7 | = | 2.77 | 8.25 |
| Loans for which the application was received between 10/01/1998 and 1/31/1999 | Any status | 91-day T-bill 1.07 | + | 2.3 | = | 3.37 | 8.25 |
| Loans for which the application was received on or after 2/01/1999 | Any status | The lesser of 8.25 percent or the weighted average of the loans consolidated, rounded to the next higher 1/8 of one percent. | | | | | 8.25 |

**Federal Direct PLUS Loans**

| | Status | Treasury Instrument | Add-on | | | Interest Rate for 7/1/2004 through 6/30/2005 | Maximum Interest Rate |
|---|---|---|---|---|---|---|---|
| Loans with first disbursement date before 7/1/1998 | Any status | 1-year constant maturity Treasury yield 2.16 | + | 3.1 | = | 5.26 | 9.00 |
| Loans with first disbursement date on or after 7/1/1998 | Any status | 91-day T-bill 1.07 | + | 3.1 | = | 4.17 | 9.00 |

**Federal Direct PLUS Consolidation Loans**

| | Status | Treasury Instrument | | Add-on | | Interest Rate for 7/1/2004 through 6/30/2005 | Maximum Interest Rate |
|---|---|---|---|---|---|---|---|
| Loans with first disbursement date before 7/1/1998 | Any status | 1-year constant maturity Treasury yield 2.16 | + | 3.1 | = | 5.26 | 9.00 |
| Loans with first disbursement date between 7/1/1998 and 9/30/1998 and loans with first disbursement date on or after 10/1/1998 for which the application was received before 10/1/1998 | Any status | 91-day T-bill 1.07 | + | 3.1 | = | 4.17 | 9.00 |
| Loans with first disbursement date between 7/1/1998 and 9/30/1998 and loans with first disbursement date on or after 10/1/1998 for which the application was received before 10/1/1998 | Any status | 91-day T-bill 1.07 | + | 3.1 | = | 4.17 | 9.00 |
| Loans for which the application was received between 10/01/1998 and 1/31/1999 | Any status | 91-day T-bill 1.07 | + | 2.3 | = | 3.37 | 8.25 |
| Loans for which the application was received on or after 2/01/1999 | Any status | The lesser of 8.25 percent or the weighted average of the loans consolidated, rounded to the next higher 1/8 of one percent. | | | | | 8.25 |

[FR Doc. 04–23720 Filed 10–21–04; 8:45 am]

**BILLING CODE 4000–01–C**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, November 15, 2004 1 p.m.–5:15 p.m. Tuesday, November 16, 2004 8:30 a.m.–4 p.m.

**ADDRESSES:** Augusta Towers Hotel & Conference Center, 2651 Perimeter Parkway, Augusta, GA 30909.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

**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*

Monday, November 15, 2004

1 p.m.—Combined Committee Session
5:15 p.m.—Executive Committee Meeting
6 p.m.—Adjourn

Tuesday, November 16, 2004

8:30 a.m.—Approval of Minutes; Agency Updates
8:45 a.m.—Public Comment Session
9 a.m.—Chair and Facilitator Update
9:30 a.m.—Waste Management Committee Report
11 a.m.—Waste Management/Nuclear Materials Committee Report
11:45 a.m.—Public Comments
12 p.m.—Lunch Break
1 p.m.—Administrative Committee Report
1:45 p.m.—Bylaws Amendment Proposal; Vice-chair Election; Presentation of Candidates
2 p.m.—Facility Disposition and Site Remediation Committee Report
3 p.m.—Nuclear Materials Committee Report
3:40 p.m.—Strategic & Legacy Management Committee Report
3:50 p.m.—Public Comments
4 p.m.—Adjourn

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

*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 through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC on October 19, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04–23677 Filed 10–21–04; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### State Energy Advisory Board

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the State Energy Advisory Board (STEAB). 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:** November 18, 2004 from 8:30 a.m. to 5 p.m., and November 19, 2004 from 8:30 a.m. to 2 p.m.

**ADDRESSES:** Sandia National Laboratories, 1515 Eubank SE., Bldg. 957 Receiving, Mail Stop 1033, Albuquerque, NM 87123.

**FOR FURTHER INFORMATION CONTACT:** Gary Burch, Office of Technology Development (EE.20), Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–0081.

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- EERE Programmatic Update
- Technology Deployment Strategy Update
- STEAB Annual Report
- STEAB Strategic Plan
- Discussion and Tour of Sandia Solar Test Facilities

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will 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, 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 at Washington, DC, on October 18, 2004.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04–23678 Filed 10–21–04; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER04–1072–000]**

### PJM Interconnection, L.L.C.; American Electric Power Service Corporation; Notice of Filing

October 15, 2004.

Take notice that on October 4, 2004, American Electric Power Service Corporation (AEP) submitted for filing an executed Service Agreement between American Electric Power Service Corporation and PJM Interconnection, L.L.C. AEP requests an effective date of September 30, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 25, 2004.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E4–2794 Filed 10–21–04; 8:45 am]
**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER03–9–003 and ER98–2157–004]**

### Westar Energy, Inc., Kansas Gas and Electric Company; Notice of Filing

October 15, 2004.

Take notice that on September 30, 2004, Westar Energy, Inc. and Kansas Gas and Electric Company, filed an amendment to their September 27, 2004 filing submitting their triennial market power report.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to these proceedings.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. eastern time on October 25, 2004.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E4–2795 Filed 10–21–04; 8:45 am]
**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Revised Open Access Transmission Service Tariff

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Informal Meeting and Comment Opportunity.

**SUMMARY:** The Western Area Power Administration (Western) is revising its Open Access Transmission Service Tariff (Tariff). Western's existing Tariff was approved by the Federal Energy Regulatory Commission (Commission) on April 12, 2002. Western intends to update certain Tariff provisions, adopt the principal features of the Commission's Standard Large Generator Interconnection Procedures (LGIP) and Standard Large Generator Interconnection Agreement (LGIA) consistent with applicable law, and to make additional changes to further Western's mission and transmission marketing efforts. Publication of this **Federal Register** notice announces a public meeting and an opportunity for informal comments on Western's revised Tariff prior to filing with the Commission.

**DATES:** Western will accept comments on the revised Tariff until November 22, 2004. Western will present a detailed explanation of the revised Tariff at an informal public meeting to be held on November 8, 2004, 1 p.m. MST, Denver, CO. Western will accept oral and written comments at this meeting, and will also accept written comments at any time during the informal comment period.

**ADDRESSES:** The public meeting location is the Radisson Stapleton Plaza Hotel, 3333 Quebec Street, Denver, CO.

Send written comments to Corporate Communications, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, e-mail *tariffcomments@wapa.gov*, fax number (720) 962–7059.

**FOR FURTHER INFORMATION CONTACT:** For substantive questions, contact Darrick C. Moe, Tariff Project Manager, Upper Great Plains Region, Western Area Power Administration, Watertown, SD at (605) 882–7501. For information on the informal meeting, copies of documents posted on Western's Web site, or for questions on how to submit comments, contact Carolyn Hinkley, Corporate Communications, Western Area Power Administration, Lakewood, CO at (720) 962–7053. Both of these individuals can also be contacted by e-mail at *tariffcomments@wapa.gov*.

**SUPPLEMENTARY INFORMATION:** Western is a Federal power marketing administration, charged with the responsibility of selling electricity generated by power plants operated by the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission. Created in 1977 under Section 302 of the Department of Energy Organization Act, Western markets and transmits Federal power resources from various multi-purpose hydroelectric projects to customers in 15 Central and Western States. Western has four Customer Service Regional Offices and the Colorado River Storage Project Management Center, each referred to in the revised Tariff as a Regional Office.

Western is not a public utility under Sections 205 and 206 of the Federal Power Act and is not specifically subject to the requirements of the LGIP and LGIA. Western is a transmitting utility subject to Section 211 of the Federal Power Act as amended by the Energy Policy Act of 1992.

On July 24, 2003, the Commission issued Order No. 2003 requiring all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement for interconnecting generating facilities capable of producing more than 20 megawatts of power to their transmission facilities. Order No. 2003 requires all public utilities to modify their open access transmission tariffs to incorporate the LGIP and LGIA and requires non-public utilities with a ''safe harbor'' Tariff to adopt the *pro forma* LGIP and LGIA to retain ''safe harbor'' status. Western seeks to retain its ''safe harbor'' status through compliance with the spirit and intent of Order No. 2003, to the extent consistent with applicable law.

The revised Tariff, a summary of changes Western intends to make to its existing Tariff, and information about the tariff process is posted on Western's Web site at *http://www.wapa.gov/oatt.htm*. Western will post comments received at the public meeting or by letter, fax or e-mail to this Web site after the close of the comment period. Responses to comments will also be posted after they are developed. Western must receive written comments by the end of the informal comment period to ensure they are considered in Western's filing with the Commission.

Dated: October 6, 2004.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. 04–23679 Filed 10–21–04; 8:45 am]

BILLING CODE 6450–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6656–8]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed October 11, 2004, through October 15, 2004, pursuant to 40 CFR 1506.9.

*EIS No. 040486, Final Supplement, BLM, NV,* Clark County Regional Flood Control Master Plan, Updated and Replaced the Original 1991 FEIS, Facilities Construction and Operation, Right-of-Way Approval and U.S. Army COE Section 404 Permit, Clark County, NV, *Wait Period Ends:* November 22, 2004, *Contact:* Adrian Garcia (702) 515–5089.

*EIS No. 040487, Final EIS, AFS, OR,* Crooked River National Grassland Vegetation Management/Grazing, Vegetation Treatments and Grazing Disposition, Ochoco National Forest, Jefferson County, OR, *Wait Period Ends:* November 22, 2004, *Contact:* Steve Gibson (541) 416–6440. This document is available on the Internet at: *http://www.fs.fed.us/r6/centraloregon.*

*EIS No. 040488, Final EIS, EPA, RI, MA,* Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project, Designation of One or More Long-Term Ocean Disposal Sites, RI and MA, *Wait Period Ends:* November 22, 2004, *Contact:* Olga Guza (617) 918–1542.

*EIS No. 040489, Final EIS, COE, FL,* Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Aquifer Storage and Recovery (ASR) Pilot Operation, Aquifer Storage and Recovery Pilot Project, To Test the Feasibility Utilizing ASR Technology for Water Storage at Seven Well Sites, Right-of-Way and NPDES Permits, Several Counties, *Wait Period Ends:* November 22, 2004, *Contact:* Rebecca Weiss (904) 232–1577.

*EIS No. 040490, Final EIS, FRC, WA, ID,* Box Canyon Hydroelectric Project, (FERC Project No. 2042–013), New License Application for an existing 72-megawatt (Mw) Hydroelectric Project, Public Utility District (PUD) No. 1, Pend Oreille River, Pend Oreille County, WA and Bonner County, ID, *Wait Period Ends:* November 22, 2004, *Contact:* Jon Cofrancesco (202) 502–8951.

EIS No. 040491, Draft EIS, NIH, MA, National Emerging Infectious Diseases Laboratories, Construction of a National Biocontainment Laboratory, BioSquare Research Park, Boston University Medical Center Campus, Boston, MA, *Comment Period Ends:* January 3, 2005, *Contact:* Valerie Nottingham (301) 480–8056.

*EIS No. 040492, Final EIS, NPS, MI,* Pictured Rocks National Lakeshore, General Management Plan and Wilderness Study, Implementation, Lake Superior, Munising and Grand Marais, Alger County, MI, *Wait Period Ends:* November 22, 2004, *Contact:* Karen Gustin (906) 387–2607.

*EIS No. 040493, Draft Supplement, STB, MT,* Tongue River Railroad Construction and Operation of the Proposed Western Alignment Tongue River III Southernmost Portion of the 41-mile Ashland to Decker Alignment, Rosebud and Bighorn Counties, MT, *Comment Period Ends:* December 06, 2004, *Contact:* Kenneth Blodgett (202) 565–1554.

*EIS No. 040494, Final EIS, FAA, IN,* Gary/Chicago International Airport Master Plan Development Including Runway Safety Area Enhancement/Extension of Runway 12–30, Funding, Lake County, IN, *Wait Period Ends:* November 22, 2004, *Contact:* Prescott C. Snyder (847) 294–7538.

**Amended Notices**

*EIS No. 040204, Draft EIS, FHW, NJ,* Cross Harbor Freight Movement Project, Improve the Movements of Goods Throughout Northern New Jersey and Southern New York, Funding, Kings, Richmond, Queens, New York Counties, NJ, *Comment Period:* November 30, 2004, *Contact:* Richard Backlund (212) 668–2205. Published FR–05–07–04 Review Period Reopened, From 09–30–2004 to 11–30–2004.

*EIS No. 040322, Draft EIS, BLM, CA,* Clear Creek Resource Management Area Plan Amendment, Hollister Resource Management Plan, Implement the Decision Made in the 1999 CCMA ROD, San Benito and Fresno Counties, CA, *Comment Period Ends:* November 15, 2004, *Contact:* Robert Beehler (831) 630–

5000. Revision of **Federal Register** notice published on 7/16/2004: CEQ Comment Period ending on 10/15/2004 has been extended to 11/15/2004.

*EIS No. 040338, Draft EIS, BLM, UT,* Price Field Office Resource Management Plan, Implementation, Proposed Areas of Critical Environmental Concerns Suitable Wild and Scenic River Segments and Special Recreation Management Area, Carbon and Emery Counties, UT, *Comment Period Ends:* November 29, 2004, *Contact:* Floyd Johnson (435) 636–3600. Revision of **Federal Register** notice published on 7/23/04: CEQ Comment Period ending 10/15/2004 has been extended to 11/29/2004.

*EIS No. 040463, Final EIS, COE, MS, IA, MO, IL, MN, WI, Programmatic EIS*—Upper Mississippi River and Illinois Waterway System Navigation Feasibility Study (UMR–IWW), Addressing Navigation Improvement Planning and Ecological Restoration Needs, MS, IL, IA, MN, MO, WI, *Wait Period Ends:* November 12, 2004, *Contact:* Denny Lunderberg (309) 794–5632. Revision of **Federal Register** notice published on 10/08/2004: CEQ Comment Period ending 11/08/2004 corrected 11/12/2004.

*EIS No. 040465, Draft EIS, NPS, AZ,* Colorado River Management Plan, To Provide a Wilderness-Type River Experience for Visitors, General Management Plan, Grand Canyon National Park, Colorado River, Coconino County, AZ, *Comment Period Ends:* January 6, 2005, *Contact:* Rick Ernenwein (928) 779–6279. Revision of **Federal Register** notice published on 10/8/2004: CEQ Comment Period ending 01/06/2004 corrected to 01/06/2005.

Dated: October 19, 2004.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 04–23690 Filed 10–21–04; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0117]; FRL–7684–1]**

## Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory; Request for Comment on Renewal of Information Collection Activities

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory (EPA ICR No. 1741.04, OMB Control No. 2070–0145). This ICR involves a collection activity that is currently approved and scheduled to expire on January 31, 2005. The information collected under this ICR relates to the reporting of corrected information to the TSCA section 8(b) Inventory of Chemical Substances in Commerce. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

**DATES:** Written comments, identified by the docket identification (ID) number OPPT–2004–0117, must be received on or before December 21, 2004.

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

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Henry Lau, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8572; fax number: (202) 564–8892; e-mail address: *lau.henry@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are a manufacturer or importer of chemical substances, mixtures, or categories listed on the TSCA Inventory and regulated under TSCA section 8, who had reported to the initial effort to establish the TSCA Inventory in 1979, and who needs to make a correction to that submission. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., Basic chemical manufacturing, resin, synthetic rubber, artificial and synthetic fibers and filaments manufacturing, paint, coating, and adhesive manufacturing, and other chemical product and preparation manufacturing.
- Petroleum refineries (NAICS 32411), e.g., Crude petroleum refineries, diesel fuels manufacturing, fuel oils manufacturing, oil refineries, petroleum distillation.

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

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2004–0117. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.*You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

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

*C. How and to Whom Do I Submit the Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0117. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0117. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0117. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

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

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

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

### *E. What Should I Consider when I Prepare My Comments for EPA?*

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

### *F. What Information is EPA Particularly Interested in?*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

## II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

*Title*: Correction of Misreported Chemical Substances on the TSCA Chemical Substances Inventory.

*ICR numbers*: EPA ICR No. 1741.04, OMB Control No. 2070–0145.

*ICR status*: This ICR is currently scheduled to expire on January 31, 2005. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

*Abstract*: Section 8(b) of the TSCA requires EPA to compile and keep current an Inventory of Chemical Substances in Commerce, which is a listing of chemical substances manufactured, imported, and processed for commercial purposes in the United States. The purpose of the Inventory is to define, for the purpose of TSCA, what chemical substances exist in U.S. commerce. Since the Inventory thereby performs a regulatory function by distinguishing between existing chemicals and new chemicals, which TSCA regulates in different ways, it is imperative that the Inventory be accurate.

However, from time to time, EPA or respondents discover that substances have been incorrectly described by reporting companies. Reported substances have been unintentionally misidentified as a result of simple typographical errors, the misidentification of substances, or the lack of sufficient technical or analytical capabilities to characterize fully the exact chemical substances. EPA has developed guidelines (45 FR 50544, July 29, 1980) under which incorrectly described substances listed in the Inventory can be corrected. The correction mechanism ensures the accuracy of the Inventory without imposing an unreasonable burden on the chemical industry. Without the Inventory correction mechanism, a company that submitted incorrect information would have to file a premanufacture notification (PMN) under TSCA section 5 to place the correct chemical substance on the Inventory whenever the previously reported substance is found to be misidentified. This would impose a much greater burden on both EPA and the submitter than the existing correction mechanism.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

## III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 2.0 hours per response. The following is a summary of the estimates taken from the ICR:

*Respondents/affected entities*: Manufacturers or importers of chemical substances, mixtures, or categories listed on the TSCA Inventory and regulated under TSCA section 8, who reported to the initial effort to establish the TSCA Inventory in 1979, and who need to make a correction to that submission.

*Estimated total number of potential respondents*: 10.

*Frequency of response*: On occasion.

*Estimated total/average number of responses for each respondent*: 1.

*Estimated total annual burden hours*: 20 hours.

*Estimated total annual burden costs*: $1,467.

## IV. Are There Changes in the Estimates from the Last Approval?

This request reflects a decrease of 180 hours (from 200 hours to 20 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease is due to a downward re-estimation of the annual number of likely responses to this information collection, offset in part by an upward estimation of the burden per response. This change is an adjustment.

### V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 14, 2004.

**Margaret N. Schneider,**

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

[FR Doc. 04–23692 Filed 10–21–04; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6656–9]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 2, 2004 (69 FR 17403).

### Draft EISs

ERP No. D–AFS–H65021–MO Rating LO, East Fredericktown Project, Shortleaf Pine Restoration, Forest Health Improvement, Treat Affected Stands and Recover Valuable Timber Products, Mark Twain National Forest, Potosi/Fredericktown Ranger District, Bollinger, Madison, St. Francois, and Ste. Genevieve Counties, MO.

*Summary:* EPA expressed no significant concerns with the proposed project.

ERP No. D–AFS–J65416–WY Rating EC2, Bighorn National Forest Revised Land and Resource Management Plan, Implementation, Big Horn Mountain Range, Bighorn National Forest, Johnson, Sheridan, Bighorn and Washakie Counties, WY.

*Summary:* EPA expressed environmental concerns with the potential for adverse impacts to water quality, aquatic resources, and terrestrial habitat. EPA expressed concerns with cumulative impacts to fish and wildlife, including the Canada lynx from the preferred alternative which proposes an 85 percent reduction in Roadless Area and greatly increases road construction and other soil disturbing activities, which can adversely impact water quality. The Final EIS should consider including a road density standard and additional mitigation measures to further improve desired condition on grazing lands.

ERP No. D–AFS–L65467–ID Rating EC2, Red Pines Project, Proposes to Implement Fuel Reduction Activities and Improve the Range of Watershed Activities, Nez Perce National Forest, Red River Ranger District, Idaho County, ID.

*Summary:* EPA expressed environmental concerns with potential increases in sediment to waterbodies, compliance with water quality standards, inconsistency with the Total Maximum Daily Load for the South Fork Clearwater River, watershed impacts associated with the Proposed Action (Alternative B), impacts on Endangered Species Act (ESA) listed salmonids and the uncertainties associated with modeling projections.

### Final EISs

ERP No. F–AFS–L65388–WA Crystal Mountain Master Development Plan, To Provide Winter and Summer Recreational Use, Special-Use-Permit, Mt. Baker-Snoqualmie National Forest, Silver Creek Watershed, Pierce County, WA.

*Summary:* The Final EIS addressed many of EPA's concerns. However, EPA suggests that wildlife crossing structures be provided on SR 410 to minimize wildlife injury or mortality increase ecological connectivity where possible, and protect tribal treaty resources.

ERP No. F–BLM–J65387–CO Silverton Outdoor Learning and Recreation Center, Authorization for Long-Term Use of 1,300 acres for Backcountry-type Skiing, Summer Recreation and Educational Activities, Amendment of the San Juan/San Miguel Resource Management Plan, San Juan County, CO.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. F–COE–E32180–FL Miami Harbor Navigation Improvements Project to Study the Feasibility of Widening and Deepening Portions of the Port, Miami-Dade County, FL.

*Summary:* EPA expressed concerns over the need for additional analysis of alternative channel widths, as well as construction techniques/designs. EPA also expressed concerns over the need for additional surveys of eelgrass habitat and an analysis of the physical capacity of the Key West ocean disposal site and the nature of the material to be used to construct the proposed artificial reefs.

Dated: October 19, 2004.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 04–23689 Filed 10–21–04; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0205; FRL–7685–9]**

## Pesticides; Implementation of Globally Harmonized System; Notice of Availability; Extension of Comment Period

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

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of August 25, 2004, announcing the availability for comment of a White Paper entitled, The Globally Harmonized System of Classification and Labeling of Chemicals: Implementation Planning Issues for the Office of Pesticide Programs. In response to requests from commenters, this document is extending the comment period for 45 days, from October 25, 2004, to December 6, 2004.

**DATES:** Comments, identified by docket identification (ID) number OPP–2004–0205, must be received on or before December 6, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** of the August 25, 2004 **Federal Register** document.

**FOR FURTHER INFORMATION CONTACT:** Mary Frances Lowe, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5689; e-mail address: *lowe.maryfrances@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

The Agency included in the August 25, 2004 **Federal Register** notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0205. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

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

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** of the August 25, 2004 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of August 25, 2004 (69 FR 52262) (FRL–7367–3). In that document, EPA issued for comment a White Paper entitled, The Globally Harmonized System of Classification and Labeling of Chemicals: Implementation Planning Issues for the Office of Pesticide Programs. EPA is hereby extending the comment period, which was set to end on October 25, 2004, to December 6, 2004.

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

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, provides this authority.

## List of Subjects

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 2004.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. 04–23836 Filed 10–20–04; 2:16 pm]

**BILLING CODE 6560–50–S**

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# EXPORT-IMPORT BANK OF THE UNITED STATES

## Sunshine Act Meeting

**ACTION:** Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Tuesday, October 26, 2004 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**OPEN AGENDA ITEM:** Shipping Finance Program.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation for Item No. 1 only.

**FURTHER INFORMATION:** For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

**Peter B. Saba,**

*General Counsel.*

[FR Doc. 04–23830 Filed 10–20–04; 12:28 pm]

**BILLING CODE 6690–01–M**

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# FARM CREDIT ADMINISTRATION

## Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the November 10, 2004 regular meeting of the Farm Credit Administration Board (Board) has been rescheduled. The regular meeting of the Board will be held November 18, 2004 starting at 9 a.m. An agenda for this meeting will be published at a later date.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 20, 2004.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 04–23852 Filed 10–20–04; 2:11 pm]

**BILLING CODE 6705–01–P**

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# FEDERAL COMMUNICATIONS COMMISSION

**[DA 04–3209]**

## Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau (''Bureau'') gives notice of Mr. John Dotson's suspension from the schools and libraries universal service support mechanism. In addition, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Dotson, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation.

**DATES:** Opposition requests must be received by November 22, 2004. However, an opposition request by the party to be suspended must be received 30 days from the receipt of suspension letter or November 22, 2004, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

**FOR FURTHER INFORMATION CONTACT:** Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-A265, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at 202–418–1420 or e-mail at *diana.lee@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Bureau has suspension and debarment authority under 47 CFR 54.521 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceedings.* DA 04–3209, which was mailed to Mr. Dotson and released on October 7, 2004. The letter (1) gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedures, and (4) describes the potential effect of debarment. The complete text of the suspension letter is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. In addition, the complete text of this letter may be retrieved from the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *fcc@bcpiweb.com.*

Federal Communications Commission.

**William H. Davenport,**

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

The suspension letter follows:

**Federal Communications Commission**

Enforcement Bureau, Investigations and Hearings Division, 445 12th Street, SW., Suite 4–C330, Washington, DC 20554, October 7, 2004.

John Dotson, 2850 Webb Avenue, Apt. 4H, Bronx, NY 10468.

Re: Notice of Suspension and of Proposed Debarment File No. EB–04–IH–0460.

Dear Mr. Dotson: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction on or about May 17, 2004 pursuant to 18 U.S.C. § 371 for conspiracy to defraud the United States.[1] Specifically, you were convicted of conspiracy to violate the following laws of the United States: (1) 18 U.S.C. § 287 (false, fictitious, and fraudulent claims); (2) 18 U.S.C. § 1001 (false statements and entries generally); and (3) 18 U.S.C. § 1343 (fraud by wire, radio, or television). Consequently, pursuant to 47 C.F.R. § 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism, also known as the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

**I. Notice of Suspension**

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

**II. Notice of Proposed Debarment**

*A. Reasons for and Cause of Debarment*

Commission rules establish procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[10] Based on your February 13, 2004 guilty plea, you were convicted on or about May 17, 2004 of conspiracy to defraud the Government by selling E-Rate services through Connect2Internet Networks, Inc. (''Connect2'') to certain schools participating in the E-Rate program but charging 100 percent of the costs to the program rather than requiring the schools to pay ten percent of the costs as required by the program rules.[11] In particular, you admitted to combining, conspiring and carrying out, with other co-conspirators, the following acts: (1) falsely representing to certain schools that they could participate in the E-Rate program at no cost to them, and that their share of the costs would be covered by outside sources donated to Connect2 for that purpose; (2) requesting certain school officials to write checks payable to Connect2 while agreeing either not to cash them or to return those monies to the schools or their designees; and (3) creating back-dated phony billing documents that give the false appearance that Connect2 had billed the schools for their costs.[12] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[13] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to

[1] Any further reference in this letter to ''your conviction'' refers to your conviction on or about May 17, 2004 of this count based on your participation in a fraudulent scheme to obtain schools and libraries E-Rate program funds. *See United States* v. *Dotson,* Docket No. 1:03cr01113BSJ, Indictment (S.D.N.Y. filed September 17, 2003) (''*Dotson* Indictment''); *United States* v. *Dotson,* Docket No. 1:03cr01113BSJ, Judgment (S.D.N.Y. May 17, 2004) (''*Dotson* Judgment'').

[2] 47 C.F.R. § 54.521; 47 C.F.R. § 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 C.F.R. § 54.521).

[3] 47 C.F.R. § 54.521(a)(4). *See* Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''Second Report and Order'').

[4] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. § 254; 47 C.F.R §§ 54.502–54.503; 47 C.F.R. § 54.521(a)(4).

[5] Second Report and Order, 18 FCC Rcd at 9226, ¶ 69; 47 C.F.R. § 54.521(e)(1).

[6] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(4).

[7] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70.

[8] 47 C.F.R. § 54.521(f).

[9] *See* Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(5), 54.521(f).

[10] Second Report and Order, 18 FCC Rcd at 9225, ¶ 66.

[11] *See Dotson* Indictment at 2, 3; *Dotson* Judgment.

[12] *Dotson* Indictment at 4–5.

[13] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(2)(i).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 C.F.R. § 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 C.F.R.] § 54.500 *et seq.*).'' 47 C.F.R. § 54.521(a)(1).

section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

*B. Debarment Procedures*

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of its decision in the **Federal Register**.[18]

*C. Effect of Debarment*

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any responses to the following address: Diana Lee, Esq., Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A265, 445 12th Street, S.W., Washington, D.C. 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (*e.g.*, Federal Express, DHL, *etc.*), please send your response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Eric Bash by telephone at (202) 418–1420 and by e-mail at *eric.bash@fcc.gov*.

Sincerely yours,

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. 04–23461 Filed 10–21–04; 8:45 am]

**BILLING CODE 6712–01–P**

[15] *See* Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(2)(i), 54.521(e)(3).

[16] Second Report and Order, 18 FCC Rcd at 9227, ¶ 74.

[17] *See id.,* 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 C.F.R. § 54.521(f).

[19] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 C.F.R. §§ 54.521(d), 54.521(g).

[20] *Id.*

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**DATE AND TIME:** Thursday, October 28, 2004 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Draft Advisory Opinion 2004–38: George Nethercutt and the Nethercutt for Senate Committee by counsel, Stephen M. Hoersting and Tim McKeever.

Draft Advisory Opinion 2004–39: Washington State Republican Party by Chris Vance, Chairman (Tentative).

Explanation and justification for the Political Committee rulemaking.

Routine administrative matters.

**SPECIAL EXECUTIVE SESSION:**

*Date and Time:* Thursday, October 28, 2004, to follow the opening meeting.

*Place:* 999 E Street, NW., Washington, DC.

*Status:* This meeting will be closed to the public pursuant to 11 CFR 2.4(b)(7).

*Person to Contact for Information:* Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 04–23855 Filed 10–20–04; 2:53 pm]

**BILLING CODE 6715–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–205]**

### Availability of Draft Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 18th set of toxicological profiles, which consists of one new draft and five updated drafts, prepared by ATSDR for review and comment.

**DATES:** In order to be considered, comments on these draft toxicological profiles must be received on or before February 23, 2005. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

**ADDRESSES:** Requests for printed copies of the draft toxicological profiles should be sent to the attention of Ms. Yulandia Jordan, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

Comments regarding the draft toxicological profiles should be sent to the attention of Ms. Nickolette Roney, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for printed copies of the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–205. Send one copy of all comments and three copies of all supporting documents to Ms. Roney at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

**FOR FURTHER INFORMATION CONTACT:** Ms. Yulandia Jordon, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888) 422–8737 or (404) 498–0261.

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on November 7, 2003 (68 FR 63098). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792) and October 25, 2001 (66 FR 54014). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.]

Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, that will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 18, 2004.

| Document | Hazardous substance | CAS No. |
|---|---|---|
| 1. | Cyanide | 000057–12–5 |
| | Hydrogen cyanide | 000074–90–8 |
| | Sodium cyanide | 000143–33–9 |
| | Potassium cyanide | 000151–50–8 |
| 2. | Dichlorobenzenes | 025321–22–6 |
| | 1, 2-Dichlorobenzene | 000095–50–1 |
| | 1,3-Dichlorobenzene | 00541–73–1 |
| | 1,4-Dichlorobenzene | 00106–46–7 |
| 3. | 1, 4-Dioxane * | 000123–91–1 |
| 4. | Hydrogen Sulfide | 007783–065–4 |
| 5. | 1, 1, 1-Trichloroethane | 000071–55–6 |
| 6. | Vinyl Chloride | 000075–01–4 |

*denotes new profile.

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information that may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

**Georgi Jones,**

*Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.*

[FR Doc. 04–23616 Filed 10–21–04; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–204]**

### Availability of Final Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of one update and four new final toxicological profiles, completing the 2nd set developed for the Department of Energy, prepared by ATSDR.

**FOR FURTHER INFORMATION CONTACT:** Ms. Yulandia Jordon, Office of Communication, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–888–422–8737 or (404)498–0261.

**SUPPLEMENTARY INFORMATION:** These toxicological profiles were developed by ATSDR for hazardous substances at Department of Energy (DOE) waste sites under Section 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund). This public law directed ATSDR to prepare toxicological profiles for hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL) and that pose the most significant potential threat to human health, as determined by ATSDR and the EPA. The current ATSDR priority list of hazardous substances at DOE NPL sites was announced in the **Federal Register** on July 24, 1996 (61 FR 38451).

Notices (66 FR 53610) and (66 FR 41243) announcing the availability of the draft toxicological profiles for public review and comment were published in the **Federal Register** on October 23, 2001, and August 7, 2001, with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and, where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control number ATSDR–174 and ATSDR–171. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

**Availability**

This notice announces the availability of one update and four new final toxicological profiles, comprising the 2nd set developed for the Department of Energy, prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

SECOND SET OF DOE PROFILES

| Toxicological profile | NTIS order No. | CAS No. |
|---|---|---|
| 1. Americium | PB2004–104396 | 7440–35–9 |
| 2. Cesium | PB2004–104397 | 7440–46–2 |
| 3. Cobalt (Update) | PB2004–104398 | 7440–48–4 |
| 4. Iodine | PB2004–104399 | 7553–56–2 |
| 5. Strontium | PB2004–104400 | 7440–35–9 |

**Georgi Jones,**

*Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.*

[FR Doc. 04–23617 Filed 10–21–04; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Cooperative Agreement for the Surveillance, and Prevention of Birth Defects

*Announcement Type:* New.

*Funding Opportunity Number:* RFA 05006.

*Catalog of Federal Domestic Assistance Number:* 93.283.

*Application Deadline:* December 21, 2004.

**I. Funding Opportunity Description**

*Authority:* This program is authorized under sections 317(k)(2) of the Public Health Service Act [42 U.S.C. 247b(k)(2)].

*Purpose:* The purpose of the program is to promote international surveillance and prevention of birth defects. This program addresses the ‘‘Healthy People 2010’’ focus area(s) of Maternal, Infant and Child Health.

Measurable outcomes of the program will be in alignment with one of the following performance goal(s) for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): (1) Prevent birth defects and developmental disabilities (2) improve the health and quality of life of Americans with disabilities.

This announcement is only for non-research activities supported by CDC. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*

Activities: Awardee activities for this program are as follows:

- Develop and/or maintain an international birth defects database that includes data from developed and developing countries from different areas of the world.
- Promote and operate an international collaboration and data clearinghouse among international partners and birth defect registries that enables international collaborative birth defect surveillance, epidemiologic assessment, and capacity building.
- Using such international partners and the international birth defects database, evaluate, compare and confirm patterns and trends of birth defects occurrences.
- Obtain, compile, and publish birth defect surveillance data from areas in the developed and developing world to assess the impact of birth defects.
- In collaboration with international partners, conduct secondary data analyses in order to evaluate potential birth defect risk factors and identify areas in need of epidemiologic assessments.
- Disseminate the birth defect surveillance data to member programs, partners such as national and international organizations, the World Health Organization, other health agencies, and other interested parties.
- Evaluate the changes in the occurrence of selected adverse reproductive outcomes likely to be prevented by folic acid (*e.g.*, neural tube defects, oral clefts, and certain heart defects) in relation to folic acid policies that have been instituted in different areas of the world, including the Americas, Europe, the Middle East, Asia, and Africa.
- Promote or develop tools and guidelines to assist the development of birth defects surveillance activities in both developed and developing countries.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Assist, if requested, in designing, developing, and evaluating methodologies and approaches used for population-based birth defects surveillance.
- Assist, if requested, in analyzing surveillance data related to birth defects.
- Assist, if requested, in providing scientific consultation and assistance in the study of birth defects and in the approaches to study design, methodology, and implementation in the conduct of secondary data analyses.
- Assist, if requested, in the definition and format of the birth defect surveillance reports.
- Assist, if requested in developing tools and guidelines for birth defect surveillance.

**II. Award Information**

*Type of Award:* Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

*Fiscal Year Funds:* 2005.

*Approximate Total Funding:* $150,000 (This amount is an estimate, and is subject to availability of funds.)

*Approximate Number of Awards:* One.

*Approximate Average Award:* $150,000 (This amount is for the first 12-month budget period.).

*Floor of Award Range:* None.

*Ceiling of Award Range:* None.

*Anticipated Award Date:* April 1, 2005.

*Budget Period Length:* 12-months.

*Project Period Length:* Up to three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

**III. Eligibility Information**

*III.1. Eligible Applicants*

• Applications may be submitted by private nonprofit organizations.

*III.2. Cost Sharing or Matching*

Matching funds are not required for this program.

*III.3. Other*

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

• Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

• Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

**IV. Application and Submission Information**

*IV.1. Address To Request Application Package*

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

*IV.2. Content and Form of Submission*

*Application:* You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

• Maximum number of pages: 25 if your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
• Font size: 12 point unreduced.
• Double spaced.
• Paper size: 8.5 by 11 inches.
• Page margin size: One inch.
• Printed only on one side of page.
• Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

• Objectives.
• Methods.
• Evaluation.
• Organizational and Program Personnel Capability.
• Program Plan.
• Budget and Justification (Not included in page limitation).

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

Curriculum Vitaes.
Organizational Charts.
Letters of Support.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

*IV.3. Submission Dates and Times*

*Application Deadline Date:* December 21, 2004.

*Explanation of Deadlines:* Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

*IV.4. Intergovernmental Review of Applications*

Executive Order 12372 does not apply to this program.

*IV.5. Funding restrictions*

Restrictions as found in 45 CFR Parts 74 and 92 and OMB Circular 1–122, which must be taken into account while writing your budget, are as follows:

• Funds may not be used for research.
• Reimbursement of pre-award costs is not allowed.
• Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services.

Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

• The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required.)

• All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

• A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

*IV.6. Other Submission Requirements*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—RFA#05006, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

## V. Application Review Information

*V.1. Criteria*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Objectives (30 Points)

Are the proposed objectives specific, measurable, and time-phased?

2. Methods (30 Points)

Are the proposed methods feasible? To what extent are the proposed methods likely to lead to the accomplishment of the proposed objectives?

3. Evaluation (15 Points)

Does the evaluation plan enable the applicant to determine the success of its activities and the benefits provided?

4. Personnel (15 Points)

Do the staff members have the experience, skills, and ability to develop and improve birth defects surveillance data to develop prevention programs and improve access to health services or early intervention programs? Are the staff roles clearly defined?

5. Project Plan (10 Points)

Is the plan adequate to carry out the proposed objectives? Does the applicant have a clear, concise understanding of the program requirements, objectives and purpose of the cooperative agreement?

Also, does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research?

This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Budget and Justification (Reviewed, But Not Scored)

*V.2. Review and Selection Process*

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCBDDD. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

Applications will be funded in order by score and rank determined by the review panel.

CDC will provide justification for any decision to fund out of rank order.

*V.3. Anticipated Announcement and Award Dates*

April 1, 2005.

## VI. Award Administration Information

*VI.1. Award Notices*

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

*VI.2. Administrative and National Policy Requirements*

45 CFR Parts 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

• AR–10 Smoke-Free Workplace Requirements.
• AR–11 Healthy People 2010.
• AR–12 Lobbying Restrictions.
• AR–14 Accounting System Requirements.
• AR–15 Proof of Non-Profit Status.
• AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

*VI.3. Reporting Requirements*

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

**VII. Agency Contacts**

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For program technical assistance, contact: J. David Erickson, Project Officer, CDC, NCBDDD, 1600 Clifton Road, NE (E86), Atlanta, GA 30333, Telephone: (404) 498–3825, E-mail: *DErickson@cdc.gov.*

For financial, grants management, or budget assistance, contact: Steward Nichols, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2788, E-mail: *SNichols@cdc.gov.*

**VIII. Other Information**

This and other CDC funding opportunity announcements can be found on the CDC web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Information on the National Center on Birth Defects and Developmental Disabilities may be found on *http://www.cdc.gov.* Click on ''Birth Defects.''

Dated: October 18, 2004.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–23726 Filed 10–21–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA) announce the following committee meeting.

*Name:* CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment.

*Times and Dates:* 8 a.m.–5 p.m., November 18, 2004. 8 a.m.–12 p.m., November 19, 2004.

*Place:* Doubletree Hotel Rockville, 1740 Rockville Pike, Rockville, Maryland.

*Status:* Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

*Purpose:* This committee is charged with advising the Secretary, the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

*Matters To Be Discussed:* Agenda items include issues pertaining to (1) AIDS Drug Assistance Program (ADAP), (2) Ryan White Reauthorization, and (3) Impact of Crystal Methamphetamine on STD rates and HIV.

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Paulette Ford-Knights, Public Health Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail *pbf7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 18, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–23723 Filed 10–21–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Community and Tribal Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), NCEH/ATSDR announces the following subcommittee meeting:

*Name:* Community and Tribal Subcommittee (CTS).

*Time and Date:* 3 p.m.–4:30 p.m., November 2, 2004.

*Place:* The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

*Status:* Open to the public, teleconference access limited only by availability of telephone ports.

*Purpose:* Under the charge of the BSC, NCEH/ATSDR, the Community and Tribal Subcommittee will provide the board with a forum for community and tribal first-hand perspectives on the interactions and impacts of the NCEH/ATSDR's national and regional policies, practices and programs.

*Matters To Be Discussed:* The agenda will include a discussion on defining the new working relationship between the CTS and the board; a discussion on the development of a statement-of-work, to include topics that can be accomplished under the new charge, to be presented to the board; and a review of the task forces to the previous CTS.

Agenda items are subject to change.

**SUPPLEMENTARY INFORMATION:** This conference call is scheduled to begin at 3 p.m. eastern standard time. To participate in the teleconference, please dial 1 (877) 315–6535 and enter conference code 383520.

**FOR FURTHER INFORMATION CONTACT:** Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC/ATSDR.

Dated: October 18, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–23725 Filed 10–21–04; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: State-Based Occupational Safety and Health Surveillance, Program Announcement Review 04–106

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): State-Based Occupational Safety and Health Surveillance, Program Announcement Review 04–106.

*Times and Dates:* 8 a.m.–8:30 a.m., December 1, 2004 (Open); 8:30 a.m.–6 p.m., December 1, 2004 (Closed); 8 a.m.–6 p.m., December 2, 2004 (Closed); 8 a.m.–5 p.m., December 3, 2004 (Closed).

*Place:* Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 23114, phone 703.684.5900.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Review 04–106.

*For Further Information Contact:* Bernadine B. Kuchinski, Ph.D., Occupational Health Consultant, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, MS–C7, Cincinnati, OH 45226, Telephone 513.533.8511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 18, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–23722 Filed 10–21–04; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–4078–N]**

### Medicare Program: Meeting of the Advisory Panel on Medicare Education—November 30, 2004

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

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on November 30, 2004. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

**DATES:** The meeting is scheduled for November 30, 2004 from 9 a.m. to 4 p.m., e.s.t.

*Deadline for Presentations and Comments:* November 23, 2004, 12 noon, e.s.t.

**ADDRESSES:** The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005, (202) 429–1700.

**FOR FURTHER INFORMATION CONTACT:** Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *ljohnson3@cms.hhs.gov.*

Press inquiries are handled through the CMS Press Office at (202) 690–6145.

**SUPPLEMENTARY INFORMATION:**

Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of the Department of Health and Human Services (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing the Advisory Panel on Medicare Education (the Panel) on January 21, 1999 and approved the renewal of the charter on January 21, 2003. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Drew E. Altman, President and Chief Executive Officer, Henry J. Kaiser Family Foundation; James L. Bildner, Chairman and Chief Executive Officer, New Horizons Partners, LLC; Dr. Jane Delgado, Chief Executive Officer, National Alliance For Hispanic Health; Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; Bobby Jindal; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Donald J. Lott, Executive Director, Indian Family Health Clinic; Dr. Frank I. Luntz, President and Chief Executive Officer, Luntz Research Companies; Jeffrey McWaters, Chairman and Chief Executive Officer, AMERIGROUP Corporation; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; David Null, Financial Advisor, Merrill Lynch; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Susan O. Raetzman, Associate Director, Public Policy Institute, AARP; and Catherine Valenti, Chairperson and Chief Executive Officer, Caring Voice Coalition.

The agenda for the November 30, 2004 meeting will include the following:

- Recap of the previous (September 9, 2004) meeting.
- Centers for Medicare & Medicaid Services Update.
- Medicare Modernization Act: Outreach and Education.
- Public Comment.
- Listening Session with CMS Leadership.
- Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic must submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by email at *ljohnson3@cms.hhs.gov* no later than 12 noon, e.s.t., November 23, 2004. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, (e.s.t.), November 23, 2004. The meeting is open to the public, but attendance is limited to the space available.

*Special Accommodation:* Individuals requiring sign language interpretation or other special accommodations must contact Ms. Johnson at least 15 days before the meeting.

**Authority:** Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: September 22, 2004.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 04–23441 Filed 10–21–04; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1484–N]**

### Medicare Program; November 22, 2004, Meeting of the Practicing Physicians Advisory Council

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

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council (the Council). The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services (the Secretary). This meeting is open to the public.

**DATES:** The meeting is scheduled for Monday, November 22, 2004, from 8:30 a.m. until 5 p.m. e.s.t.

**ADDRESSES:** The meeting will be held in Room 505A, 5th floor, in the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

**MEETING REGISTRATION:** Persons wishing to attend this meeting must contact John Lanigan, the Designated Federal Official (DFO), by e-mail at *Jlanigan@cms.hhs.gov* or by telephone at (410) 786–2312, at least 72 hours in advance of the meeting to register. Persons not registered in advance will not be permitted into the Humphrey Building and will not be permitted to attend the Council meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Simon, M.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Blvd., Mail Stop C4–10–07, Baltimore, MD 21244–1850, telephone (410) 786–2312, or e-mail *Ksimon@cms.hhs.gov.* News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committee's Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet at *http://www.cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities.

**SUPPLEMENTARY INFORMATION:**

The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 (a) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action prior to its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are—Jose Azocar, M.D.; James Bergeron, M.D.; Ronald Castellanos, M.D.; Rebecca Gaughan, M.D.; Peter Grimm, D.O.; Carlos R. Hamilton, M.D.; Dennis K. Iglar, M.D.; Joe Johnson, D.C.; Christopher Leggett, M.D.; Barbara McAneny, M.D.; Geraldine O'Shea, D.O.; Laura B. Powers, M.D.; Michael T. Rapp, M.D. (Chairperson); Anthony Senagore, M.D.; and Robert L. Urata, M.D.

The meeting will commence with a status report and our response to recommendations made by the Council at the August 30, 2004 meeting and prior meeting recommendations. Additionally, an update will be provided on the Physicians Regulatory Issues Team and Part ''D'' Benefits.

In accordance with the Council charter we are requesting assistance with the following agenda topics:

- Physician Fee Schedule Final Rule;
- Outpatient Final Rule;
- Medicare Coverage Process;
- Medicare Preventive Benefits & Welcome to Medicare Exam Visit; and
- Quality Initiative Projects: Doctor Office Quality—Information Technology Project (DOQ–IT).

For additional information and clarification on these topics, contact the Executive Director, listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make a 5-minute oral presentation on agenda issues must contact the Executive Director by 12 noon, November 1, 2004, to be scheduled. Testimony is limited to agenda topics only.

The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to John Lanigan, Designated Federal Official, by e-mail at *Jlanigan@cms.hhs.gov* no later than 12 noon, November 1, 2004, for distribution to Council members for review prior to the meeting. Physicians and medical organizations not scheduled to speak may also submit written comments to the Designated Federal Officer for distribution.

The meeting is open to the public, but attendance is limited to the space available.

*Special Accommodations:* Individuals requiring sign language interpretation or other special accommodation must contact John Lanigan by e-mail at *Jlanigan@cms.hhs.gov* or by telephone at (410) 786–2312 at least 10 days before the meeting.

**Authority:** (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: October 7, 2004.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 04–23442 Filed 10–21–04; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1302–N]**

### Medicare Program; Town Hall Meeting on the Medicare Provider Feedback Group (MPFG) November 16, 2004

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

**ACTION:** Notice.

**SUMMARY:** This notice announces a town hall meeting. The purpose of the meeting is to solicit the opinions of individual Medicare providers and suppliers to educate CMS on how we can better serve Medicare providers and suppliers. Providers, physicians, home health agencies, industry billing staff representatives, and other Medicare billers are invited to attend this meeting. We will consider facts and opinions provided by individuals during this meeting. The information gathered will be used as feedback on CMS provider and supplier communication activities and related topics. The meeting is open to the public, but attendance is limited to space available.

**DATES:** The meeting is scheduled for Tuesday, November 16, 2004, from 2 p.m. until 3 p.m. e.s.t.

**ADDRESSES:** The meeting will be held in the auditorium at the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Robin Magwood, (410) 786–1999. You may also send e-mail inquiries about this meeting to *RMagwood@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On November 16, 2004, we will convene a town hall meeting to solicit the opinions of individual Medicare providers and suppliers on how CMS can better serve Medicare providers and suppliers through communication education materials and other means. This meeting will provide the Agency with a venue that allows Agency managers an opportunity to interact with individual Medicare providers and suppliers and obtain their opinions on various topics. We will have follow-up meetings to solicit additional opinions and clarify any issues that may arise during the November 16, 2004 meeting.

At the November 16th meeting, we will explain CMS's design for gathering individual provider and supplier information, and then ask for opinions on how CMS can better serve the Medicare provider and supplier community. An on-line registration is available for interested individuals who wish to participate in the meeting in person or by teleconference. The on-line registration will capture contact information and practice characteristics, such as names, email addresses, and provider and supplier types.

*Meeting Format:* The meeting will begin with an overview of the goals and objectives of the initiative, including a discussion of our efforts to gather feedback from individual Medicare providers and suppliers. The meeting moderator will be introduced, and, along with members of the Provider Communications Group, Centers for Medicare Management, will provide background information on the initiative. We will then hold a question and answer session that offers meeting attendees an opportunity to provide feedback on how CMS serves Medicare providers and suppliers, as well as make suggestions regarding how this process can be improved.

*Attending the Meeting:* The Provider Communication Group, Centers for Medicare Management, Division of Provider Relations and Evaluation, is the coordinator for this meeting. This meeting will be held in a Federal Government building, and persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, and be listed on an approved security list before entering. Persons interested in attending the meeting and providing feedback must complete the on-line registration located at *http://registration.intercall.com/go/cms.* Registration will open on October 25, 2004 and close November 23, 2004. The on-line registration system will generate a confirmation page to indicate the completion of your registration. Please print this page as your registration receipt. Registration after 12 p.m. on November 15, 2004 will delay confirmation and individuals may not be permitted entrance to the building. However, registrations received after November 16 will enable individuals to listen to a digital recording of the meeting.

Individuals may participate in the public meeting by teleconference. The dial-in number is 877–357–7851, and you should reference conference identification number 1040512. Physicians and other interested parties may speak or ask questions during the question and answer period facilitated by the moderator. Parties may also submit written comments to the point of contact named in this **Federal Register** Notice.

*Special Accommodations:* Individuals requiring sign language interpretation or other special accommodations must contact Keri Boston by e-mail at *Kboston@cms.hhs.gov.*

**Authority:** Section 1811 and 1831 of the Social Security Act (42 U.S.C. 1395c and 1395j).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 14, 2004.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 04–23443 Filed 10–21–04; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Amendment of Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science. This meeting was announced in the **Federal Register** of October 4, 2004 (69 FR 59238). The amendment is being made to reflect changes in the *Agenda* and *Location* portions of the document. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:** Hilda Scharen, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *SCHARENh@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 4, 2004, FDA announced that a meeting of the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science would be held on November 3 and 4, 2004. On page 59238, in the third column, the *Location* and *Agenda* portions of the meeting are amended to read as follows:

*Location*: Hilton Washington DC North, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

*Agenda*: On November 3, 2004, the subcommittee will address the following issues: (1) Receive topic updates for ongoing FDA activities previously presented to the subcommittee; (2) discuss and provide comments on the evidence for updating labels of approved drugs to include integrating pharmacogenetic, pharmacokinetic, and prognostic biomarkers for the purpose of optimizing therapeutic response and reducing risks of toxicity, with CAMPTOSAR (irinotecan hydrochloride), by Pfizer Inc., as an example; and (3) discuss and provide comments on metabolism- and transporter-based drug-drug interactions included as recommendations in a draft guidance for industry being prepared by FDA. On November 4, 2004, the subcommittee will discuss and provide comments on a new critical path project related to general aspects of the transition of biomarkers to surrogate endpoints, with a focus on planning and process, rather than on specific biomarkers or surrogate endpoints.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 14, 2004.

**Sheila Dearybury Walcoff,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–23626 Filed 10–21–04; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Science Board to the Food and Drug Administration; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Science Board to the Food and Drug Administration.

*General Function of the Committee*: The Board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the Board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

*Date and Time*: The meeting will be held on November 5, 2004, 8 a.m. to 5 p.m.

*Location*: 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

*Contact Person*: Jan Johannessen, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, *jjohannessen@fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512603. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The Board will hear about and discuss: (1) An update on the FDA Critical Path Initiative (*http://www.fda.gov/oc/initiatives/criticalpath/*), including an overview of docket submissions, current status, reports on related activities (Medical Technology Innovation Task Force and Foods Critical Path White Paper), and future plans; (2) FDA's final report on pharmaceutical current good manufacturing practices (*http://www.fda.gov/cder/gmp/gmp2004/GMP_finalreport2004.htm*); and (3) an internal peer review of the Office of Regulatory Affairs' pesticide program, including plans for the establishment of a Science Board subcommittee to conduct an external program peer review.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 29, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 29, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jan Johannessen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 14, 2004.

**Sheila Dearybury Walcoff,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–23625 Filed 10–21–04; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on Nurse Education and Practice (NACNEP).

*Dates and Times:* November 3, 2004, 8:30 a.m.–5 p.m.; November 4, 2004, 8:30 a.m.–5 p.m.; November 5, 2004, 8:30 a.m.–3 p.m.

*Place:* The St. Regis Hotel, 923 16th Street, NW., Washington, DC 20006.

*Status:* The meeting will be open to the public.

*Agenda:* Agency and Bureau administrative updates will be provided. The purpose of the meeting is to continue the April 2004 meeting focusing on geriatrics with implications for the nursing workforce, education and practice. While the April meeting focused on geriatric nursing workforce issues, geriatric nursing practice and education will be highlighted in this meeting. An opening presentation will provide a comprehensive view of patient safety in long-term care to be followed by a panel presentation of Health Resources and Services Administration, Bureau of Health Professions (BHPr), geriatric exemplars. Additional presentations will highlight culturally competent care from the consumers' perspective and geriatric nursing education addressing models, gaps and implications for the future. An update of BHPr's performance measures will also be presented. Work group discussions will take place on the first and second days to develop recommendations related to geriatrics. On the third day the Council will review a draft of the Fourth Report to the Secretary, HHS, and Congress and finalize all geriatrics recommendations from the April 2004 and the November 2004 meetings on nursing workforce, education and practice.

**FOR FURTHER INFORMATION CONTACT:** Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, M.S., R.N., Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: October 14, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–23627 Filed 10–21–04; 8:45 am]

**BILLING CODE 4165–15–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, 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.

#### Inhibitors of HIV Ribonuclease H Antiviral Properties

Drs. John Beutler, Stuart LeGrice, Scott Budihas, Antony Wamiru, Roberta Gardella, and Jennifer Wilson (all of NCI); Dr. Michael Parniak (EM)

U.S. Provisional Application filed 30 Aug 2004 (DHHS Reference No. E–256–2004/0–US–01)

*Licensing Contact:* Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

The invention describes a class of compounds that inhibit HIV RNase H and the methods of using these compounds for the treatment of HIV infections. More specifically, these compounds are vinylogous urea derivative containing substituted thiophene core structures and these compounds were part of the 100,000 member library of compounds purchased by NCI from ChemBridge. The selectivity of the antiviral activity was demonstrated in their selective inhibition of HIV–1 and HIV–2 Rnase H enzymes 1 in the CEM cell line of CD4+ lymphoblast cells. Five members of this class of compounds were able to block the cytopathic effect of the virus at concentrations that did not inhibit cell growth. Thus, these compounds may be used in the development of therapeutics for the treatment of retroviral infections, such as AIDS. In addition, these compounds described in this invention may also have particular value when used in combination treatments with other antiviral therapies directed at other viral targets, such as protease and integrase.

#### Protozoan Derived Antagonist of CCR5

Drs. Alan Sher, Julio Aliberti, Jose Ribeiro, and John Andersen (all of NIAID); Dr. Hana Golding (FDA)

U.S. Provisional Application No. 60/586,884 filed 08 Jul 2004 (DHHS Reference No. E–272–2004/0–US–01)

*Licensing Contact:* Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

The invention describes the anti-HIV properties of cyclophilin-18, a protein expressed by the protozoan parasite Toxoplasma gondii. The protein was found to bind to the chemokine receptor CCR5 which is also a co-receptor for the HIV virus. Both the native and recombinant molecules display inhibitory activity in HIV–1 fusion (syncitia formation) and infectivity assays with human T cells and macrophages. Thus, Toxoplasma gondii cyclophilin-18 or modified versions of the molecule may be used in the development of treatment for AIDS. In particular, the protein described in this invention may have particular value when used as a microbicide for blocking initial HIV infection. More details of this invention can be found in Golding et al., ''Inhibition of HIV–1 Infection by a CCR5 Binding Cyclophilin from Toxoplasma gondii'', Blood 1 Nov 2003 102(9): 3280–3286.

#### Treatment of Human Viral Infections (Resveratrol)

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI)

U.S. Provisional Application No. 60/588,013 filed 13 Jul 2004 (DHHS Reference No. E–279–2004/0–US–01)

*Licensing Contact:* Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

This application describes the methods for treating or preventing an HIV infection by the administration of an Egr 1 activator called Resveratrol (3, 5, 4''-trihydroxystilbene) and its derivatives. It has been known that HIV, once it infects a cell, integrates into the cellular genome and can (1) rapidly undergo lytic infection, or (2) lay dormant for a period of time (latent infection). The existence of latent infected cells poses a great challenge to HIV therapy because (1) there are no good existing means that can separate the latent infected cells from the uninfected cells; (2) even when antiretroviral drugs are able to completely suppress detectable HIV replication, these latent infected cells will remain and HIV can subsequently complete the viral replication cycle to produce more virus. Since Resveratrol and its derivatives can activate lytic replication from latent infected cells via its effects on Erk1/2 signaling, Resveratrol and its derivatives may lead to therapies in which Resveratrol and/or its derivatives is given together with highly active antiretroviral therapy in an effort to decrease or eliminate the reservoir of latent infected cells with hope of perhaps eventually curing a patient of HIV infection.

**Treatment of Human Viral Infections (Proteosome Inhibitors)**

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI)
U.S. Provisional Application No. 60/587,810 filed 13 Jul 2004 (DHHS Reference No. E–280–2004/0–US–01)
*Licensing Contact:* Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

This application describes the methods for treating or preventing an HIV infection by the administration of proteosome inhibitors and their derivatives. It has been known that HIV, once it infects a cell, integrates into the cellular genome and can (1) rapidly undergo lytic infection, or (2) lay dormant for a period of time (latent infection). The existence of latent infected cells poses a great challenge to HIV therapy because (1) there are no good existing means that can separate the latent infected cells from the uninfected cells; (2) even when antiretroviral drugs are able to completely suppress detectable HIV replication, these latent infected cells will remain and HIV can subsequently complete the viral replication cycle to produce more virus. Since proteosome inhibitors can activate lytic replication from latent infected cells, proteosome inhibitors may lead to therapies in which proteosome inhibitors are given together with highly active antiretroviral therapy in an effort to decrease or eliminate the reservoir of latent infected cells with hope of perhaps eventually curing a patient of HIV infection.

**Treatment of Human Viral Infections (Imatinib)**

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI)
U.S. Provisional Application No. 60/588,015 filed 13 Jul 2004 (DHHS Reference No. E–281–2004/0–US–01)
*Licensing Contact:* Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

This application describes the methods for treating or preventing an HIV infection by the administration of abl-kinase inhibitor called imatinib and its derivatives. It has been known that HIV, once it infects a cell, integrates into the cellular genome and can (1) rapidly undergo lytic infection, or (2) lay dormant for a period of time (latent infection). The existence of latent infected cells poses a great challenge to HIV therapy because (1) there are no good existing means that can separate the latent infected cells from the uninfected cells; (2) even when antiretroviral drugs are able to completely suppress detectable HIV replication, these latent infected cells will remain and HIV can subsequently complete the viral replication cycle to produce more virus. Since imatinib and its derivatives can activate lytic replication from latent infected cells by activating NF–kB, imatinib and its derivatives may lead to therapies in which imatinib and/or its derivatives is given together with highly active antiretroviral therapy in an effort to decrease or eliminate the reservoir of latent infected cells with hope of perhaps eventually curing a patient of HIV infection.

**Treatment of Human Viral Infections (Farnesyl Transferase Inhibitors)**

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI)
U.S. Provisional Application No. 60/587,771 filed 13 Jul 2004 (DHHS Reference No. E–282–2004/0–US–01)
*Licensing Contact:* Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

This application describes the methods for treating or preventing an HIV infection by the administration of farnesyl transferase inhibitors such as FTI277, L–744832, BMS214662, R115777 and SCH66336. It has been known that HIV, once it infects a cell, integrates into the cellular genome and can (1) rapidly undergo lytic infection, or (2) lay dormant for a period of time (latent infection). The existence of latent infected cells poses a great challenge to HIV therapy because (1) there are no good existing means that can separate the latent infected cells from the uninfected cells; (2) even when antiretroviral drugs are able to completely suppress detectable HIV replication, these latent infected cells will remain and HIV can subsequently complete the viral replication cycle to produce more virus. Since farnesyl transferase inhibitors can activate lytic replication from latent infected cells by modulating membrane-bound Ras–Rho levels, farnesyl transferase inhibitors may lead to therapies in which farnesyl transferase inhibitor is given together with highly active antiretroviral therapy in an effort to decrease or eliminate the reservoir of latent infected cells with hope of perhaps eventually curing a patient of HIV infection.

Dated: October 15, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–23650 Filed 10–21–04; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel. Member Conflict Meeting.

*Date:* November 17, 2004.

*Time:* 6 p.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23654 Filed 10–21–04; 8:45 am]

BILLING CODE 4140–01–M

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## 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 Initial Review Group; Biomedical Research and Research Training Review Subcommittee A.

*Date:* November 4–5, 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:* Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, 301–594–2848, *latkerc@nigms.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. 93.375, 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: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23655 Filed 10–21–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Services Conflicts 1.

*Date:* November 12, 2004.

*Time:* 1:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23656 Filed 10–21–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets 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 Dental and Craniofacial Research Special Emphasis Panel 05–24, Review of R13s.

*Date:* November 12, 2004.

*Time:* 10:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–25, Review of R13s.

*Date:* November 17, 2004.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–23, Review of R13s.

*Date:* December 7, 2004.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary Kelly, Scientific Review Specialist, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., Rm. 4AN44, Bethesda, MD 20892–6402, (301) 594–4809, *mary_kelly@nih.gov.*

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–13, Review of RFA DE–05–003, Oral Complications of HIV.

*Date:* February 16–17, 2005.

*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:* Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23657 Filed 10–21–04; 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 Hypoxia in Development: Injury and Adaptation Mechanisms.

*Date:* November 10, 2004.

*Time:* 10:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*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: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23658 Filed 10–21–04; 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; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, October 26, 2004, 1 p.m. to October 26, 2004, 4 p.m., National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 which was published in the **Federal Register** on October 6, 2004, 69 FR 193 page 59942.

The meeting is cancelled due to the withdrawal of the application to be reviewed.

Dated: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23659 Filed 10–21–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed 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 Neurological Disorders and Stroke Special Emphasis Panel, CRC Re-Review.

*Date:* November 5, 2004.

*Time:* 7:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Essex House—A Westin Hotel, 160 Central Park South, New York, NY 10019.

*Contact Person:* Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 15, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23660 Filed 10–21–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Fellowship Review.

*Date:* November 19, 2004.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Jefferson Hotel, 1200 16th Street, NW., Washington, DC 20036.

*Contact Person:* Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, ES Cells in Parkinson Disease.

*Date:* November 30, 2004.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, (301) 496–9223, *saavedrr@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 15, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23661 Filed 10–21–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel, Bayer G13.

*Date:* December 1, 2004.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23652 Filed 10–21–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Library of Medicine, October 14, 2004, 9 a.m. to October 14, 2004, 5 p.m., National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on August 10, 2004, 69 FR 161.

The meeting will be held on October 19, 2004, which is changed from the previous date of October 14, 2004. The meeting is partially Closed to the public.

Dated: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23653 Filed 10–21–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Adolescent Depression.

*Date:* October 19–20, 2004.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@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 Molecular Genomics.

*Date:* October 20, 2004.

*Time:* 4:30 p.m. to 5:30 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:* Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timining limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB Q 50R: PAR03–106: Innovations in Biomedical Imaging Computation.

*Date:* November 1, 2004.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@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 Member Conflict MCE.

*Date:* November 1, 2004.

*Time:* 3 p.m. to 5 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:* Reed A. Graves, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@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, Genetic and Genomic Approaches to Nervous System Function and Dysfunction.

*Date:* November 3, 2004.

*Time:* 12 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Robert C. Elliott, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

*Date:* November 4–5, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

*Contact Person:* Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special. Emphasis Panel, Hematology Small Business Activities.

*Date:* November 4, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@csr.nih.gov.*

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics C Study Section.

*Date:* November 4–5, 2004.

*Time:* 8 a.m. at 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*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.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Conflicts in Biophysics and Chemistry.

*Date:* November 4, 2004.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Microscopic Imaging.

*Date:* November 4–5, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Health of the Population.

*Date:* November 4–5, 2004.

*Time:* 8 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:* Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Innate Immunity and Inflammation.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR: Metabolic, Physiological and Childhood Behavior and Education.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 BPC–C (30) Shared Instrumentation Panel.

*Date:* November 4–5, 2004.

*Time:* 8:30 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:* 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:* Health of the Population Integrated Review Group; Health Services Organization and Delivery Study Section.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7816, Bethesda, MD 20892, 301–435–3562, *raffertc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Epidemiology of Diabetes, Kidney and Infectious Diseases.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street, NW., Washington, DC 20037.

*Contact Person:* Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Instrumentation and System Development.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov.*

*Name of Committee:* Health of the Population Integrated Review Group; Epidemiology of Cancer Study Section.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC.

*Contact Person:* Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Anterior Eye Diseases.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; ZRG1 ASG–01 Q: Aging Systems and Geriatrics: Quorum.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Charles G. Hollingsworth, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5179, MSC 7840, Bethesda, MD 20892, 301–345–2406, *hollinc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Bacterial Biodefense Agents.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 3 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:* 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; Chemistry/Biophysics SBIR/STTR Panel.

*Date:* November 4–5, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Wyndham City Center Hotel, 1143 New Hampshire Avenue, Washington, DC 20037.

*Contact Person:* Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Developmental Disabilities, Communication and Science Education.

*Date:* November 4–5, 2004.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

*Contact Person:* Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Orthopaedics.

*Date:* November 4, 2004.

*Time:* 1 p.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:* Aftab A Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594–6376, *ansaria@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; ZRG1 SBIB S 16B: Developmental Method for In Vivo Imaging and Bioengineering Research.

*Date:* November 4, 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:* Xiang-Ning Li, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, (301) 435–1744, *lixiang@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Protease Signaling.

*Date:* November 4, 2004.

*Time:* 2 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:* 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:* Center for Scientific Review Special Emphasis Panel; ZRG1 IFCN E (11) Pain SBIR–STTR.

*Date:* November 4, 2004.

*Time:* 2 p.m. to 4:40 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:* Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Parasitology.

*Date:* November 4, 2004.

*Time:* 3 p.m. to 6 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; NASAA Members Special Emphasis Panel.

*Date:* November 4, 2004.

*Time:* 3:30 p.m. to 5:30 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:* William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG1 F02A (20)L Fellowships: Behavioral Neuroscience

*Date:* November 4–5, 2004.

*Time:* 7 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Michael Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@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: October 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–23651 Filed 10–21–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Request for Public Comment on a Written Request Issued by the Food and Drug Administration on the Use of Oral Azithromycin for the Treatment or Prevention of Pneumonia or Conjunctivitis Caused by Chlamydia Trachomatis in Infants

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health (NIH) is requesting public comment on the following Written Request issued by the Food and Drug Administration (FDA) for off-patent drugs as defined in the Best Pharmaceuticals for Children Act (BPCA). The Written Request was referred to the NIH by the FDA as

required by the BPCA. The Written Request was developed following formulation of an NIH-generated priority list, which prioritizes certain drugs most in need of study for use by children. The priority list was produced in consultation with the FDA, other NIH Institutes and Centers, and pediatric experts, as mandated by the BPCA. The studies that are described in the Written Request are intended to characterize the safety, efficacy, and pharmacokinetics of the drug for optimum use in pediatric patients.

**DATES:** Comments are requested within 45 days of publication of this notice.

**ADDRESSES:** Submit comments to: Anne Zajicek, M.D., Pharm.D., National Institute of Child Health and Human Development (NICHD), 6100 Executive Boulevard, Suite 4B–09, Bethesda, MD 20892–7510, telephone 301–435–6865 (not a toll-free number), e-mail <*BestPharmaceuticals@mail.nih.gov*>.

**FOR FURTHER INFORMATION CONTACT:** Anne Zajicek, M.D., Pharm.D., National Institute of Child Health and Human Development (NICHD), 6100 Executive Boulevard, Suite 4B–09, Bethesda, MD 20892–7510, telephone 301–435–6865 (not a toll-free number), e-mail <*BestPharmaceuticals@mail.nih.gov*>.

**SUPPLEMENTARY INFORMATION:** The NIH is providing notice of Written Requests issued by the FDA, and is requesting public comment. On January 4, 2002, President Bush signed into law the Best Pharmaceuticals for Children Act (BPCA). The BPCA mandates that NIH, in consultation with the FDA and experts in pediatric research, shall develop, prioritize, and publish an annual list of certain approved drugs for which pediatric studies are needed. In response to this list, the FDA then issues a Written Request to holders of the New Drug Application (NDA) or abbreviated New Drug Application (aNDA) to request that pediatric studies be performed to provide needed safety and efficacy information for pediatric labeling. If the Written Request is declined by the NDA/aNDA holder(s), the Written Request is referred to NIH, specifically the NICHD. A Request for Proposal (RFP) is then issued based on the Written Request and proposals are reviewed by a peer-review process for contract award. To assure that the most appropriate pediatric studies are delineated in the RFP, public comment on the Written Request for the use of oral azithromycin to treat Chlamydia trachomatis pneumonia in infants less than four months of age, and to prevent Chlamydia trachomatis conjunctivitis and pneumonia in at-risk infants less than two weeks of age, is hereby requested by the NIH.

**Duane Alexander,**

*Director, National Institute for Child Health and Human Development, National Institutes of Health.*

**Azithromycin Written Request**

Dear Contact: Reference is made to your New Drug Application 50–710 for Zithromax® (azithromycin) for Oral Suspension. To obtain needed pediatric information on the use of oral azithromycin, the Food and Drug Administration (FDA) is hereby making a formal Written Request, pursuant to Section 505A of the Federal Food, Drug, and Cosmetic Act, that you submit information from studies in pediatric patients described below.

*Rationale:* Genital infection with Chlamydia trachomatis (CT) is the most commonly reported sexually transmitted disease in the U.S. Because of the high prevalence of CT infection in women of childbearing age, it is estimated that more than 100,000 newborn babies are exposed during the birth process annually. An infant born to a woman with an untreated or inadequately treated genital CT infection is at considerable risk for acquiring the organism, particularly during vaginal delivery. CT is acquired in approximately 50% of infants born vaginally to infected mothers and has been reported in infants delivered by cesarean section with intact membranes. Results from existing studies indicate that the risk of developing conjunctivitis ranges from 8 to 44%, and the risk of developing pneumonia ranges from 0 to 17% in those infants who are exposed to CT at birth. The mean rates calculated from those studies are 15% for conjunctivitis, and 7% for pneumonia.(1) Conjunctivitis most often occurs during the first two to three weeks after birth, and pneumonia most often occurs between two weeks and three months of age, with a peak incidence of pneumonia between six and nine weeks of age. Antecedent conjunctivitis is not always present.

Recommended treatment by the American Academy of Pediatrics (AAP) Committee on Infectious Diseases in 2003 for CT conjunctivitis and pneumonia includes a 14-day course of orally administered erythromycin, given in four divided doses daily.(2) In 1997, the AAP also recommended prophylactic antimicrobial treatment with erythromycin of infants exposed to CT at delivery.(3) However, the recommendation was changed following the recognition of an association between erythromycin use during the first two weeks of life and subsequent infantile hypertrophic pyloric stenosis (IHPS).

The incidence of IHPS in infants treated with erythromycin during the first two weeks of life ranges from 27 to 32 cases per 1000 live births.(4, 5, 6) The baseline IHPS incidence rate reported in the general infant population ranges from 0.85 to 5 cases per 1000 live births, with a most recent estimate between 1 and 3 cases per 1000.(7) It is not clear whether IHPS is associated with the macrolide class of antibiotics or limited to erythromycin. Azithromycin may have a lower potential for IHPS, based on physicochemical differences that exist between azithromycin and erythromycin in the areas of gastrokinesis and acid catalysis.(8) From an ethical standpoint, a study using azithromycin to prevent CT conjunctivitis and pneumonia is justified because antibiotic prophylaxis was the standard of care until the association of erythromycin with IHPS was recognized. There is still a need to prevent conjunctivitis and pneumonia in infants exposed to CT at birth.

Azithromycin is labeled for use in infants six months of age and older. Off-label use of azithromycin in infants younger than six months of age occurs. However, no published controlled studies of azithromycin treatment for chlamydial pneumonia during the first six months of life were located in the English literature (1990–2003). In vitro, minimal inhibitory and minimal bactericidal concentrations of azithromycin have been reported to be similar to those of erythromycin against CT in vitro.

Differences between azithromycin and erythromycin metabolism may provide dosing regimen advantages of azithromycin for the infant. Based on a longer half-life, azithromycin would need to be given less frequently than erythromycin.

*Drug Indications:*

1. Oral azithromycin for the treatment of CT pneumonia in infant patients less than four months of age.

2. Oral azithromycin for the prevention of CT conjunctivitis and pneumonia in at-risk infants less than two weeks of age.

*Types of Studies and Study Objectives:*

1. Single Dose Pharmacokinetics (PK) Study: Will characterize single dose oral azithromycin pharmacokinetics, safety and tolerability in patients with CT pneumonia or conjunctivitis at one or more potentially clinically relevant doses. The initial dose of azithromycin in this study will be guided by extrapolation from data of azithromycin use in older infants, published literature and current medical practice. PK information from patients with pneumonia will guide the starting dose for Study 2. PK information from patients with conjunctivitis will help to guide the starting dose(s) used in Studies 3 and 4.

2. Efficacy, Safety and PK Study:

a. Will determine oral azithromycin efficacy for the treatment of chlamydial pneumonia in comparison to oral erythromycin.

b. Will characterize the safety profile of oral azithromycin in the treatment of CT pneumonia.

c. To characterize oral azithromycin multiple-dose pharmacokinetics in patients with CT pneumonia.

3. Single dose PK Study: Will characterize single-dose oral azithromycin PK, safety and tolerability in infants less than two weeks of age born to mothers with untreated or inadequately treated genital tract infection at one or more clinically relevant doses. Initial dose will be guided by results of Studies 1 and 2.

4. Efficacy, Safety and PK Study:

a. Will determine oral azithromycin efficacy, in comparison to placebo, for the prevention of CT conjunctivitis and pneumonia, in infants less than two weeks of age.

b. Observe the incidence of IHPS following oral azithromycin use in infants less than two weeks of age, compared with placebo.

c. Determine individual incidence rates of CT conjunctivitis and pneumonia following azithromycin use or placebo, in infants less than two weeks of age, who were born to mothers with untreated or inadequately treated CT genital tract infection.

d. Characterize a safety profile for oral azithromycin.

e. Characterize azithromycin multiple-dose pharmacokinetics in infants less than two weeks of age.

Study 1 will be submitted to and assessed by the FDA in a timely manner, prior to proceeding with Study 2. Study 2 will be submitted to and assessed by the FDA prior to proceeding with Studies 3 and 4. In particular, the adverse event profile observed in Studies 1 and 2 will play a primary role in deciding whether to proceed. The pharmacokinetic data from Studies 1 and 2 will guide dosing in Studies 3 and 4. Results from the single dose pharmacokinetic studies of azithromycin (Studies 1 and 3) will be used in planning Studies 2 and 4, respectively.

*Age group in which all studies will be performed:*

Studies 1 and 2: Patients will be less than four months of age at study entry.

Studies 3 and 4: Patients will be less than two weeks of age at study entry.

*Entry Criteria:* Studies 1 and 2 will include male and female patients with physical, radiologic and bacteriologic and other laboratory findings consistent with a diagnosis of CT pneumonia with or without conjunctivitis. Study 1 will also include patients with physical and bacteriologic findings consistent with a diagnosis of CT conjunctivitis alone. Studies 3 and 4 will include male and female patients who were born to mothers with untreated or inadequately treated CT genital tract infection, and lack evidence of CT infection at the time of study entry. The protocol will specify additional criteria for study inclusion/exclusion, and should specifically address prior antibiotic use.

*Study Design:* Criteria for withdrawal of individual patients from any study will be defined in the protocols for Studies 2 and 4. An independent Data Monitoring Committee (DMC) will be established for Studies 2 and 4. The study stopping rules used by the DMC will be specified in all protocols.

Studies 1, 2, 3, and 4: Studies that assess pharmacokinetics will utilize sparse sampling and a population PK approach to minimize blood loss to individual patients. Sparse blood samples should be obtained at defined intervals to avoid collection of samples at fixed times. Bioanalytical methods to determine azithromycin concentrations must be capable of using small blood volumes to minimize blood loss.

Study 2: This study will be multicenter, prospective, randomized, double-blind, parallel-arm, and active-controlled, to assess oral azithromycin non-inferiority to oral erythromycin for the treatment of CT pneumonia with or without conjunctivitis. The protocol will specify the criteria for the diagnosis of CT pneumonia as well as criteria for pneumonia cure. Multiple-dose pharmacokinetics will be assessed in a subset of patients. Rationale for study duration will be provided in the protocol, taking into account that CT pneumonia may occur in patients through three months of age, with or without prior history of CT conjunctivitis.

Study 4: This study will be a multicenter, prospective, randomized, double-blind, parallel-arm and placebo-controlled. The study will evaluate oral azithromycin effectiveness in the prevention of CT conjunctivitis and pneumonia in comparison to placebo. The protocol will specify criteria for the diagnoses of CT conjunctivitis and pneumonia. Criteria for the definition of IHPS will be specified in the protocol. Multiple-dose pharmacokinetics will be assessed in a subset of patients in Study 4.

*Number of Patients:* Studies (1, 2, 3, and 4): A sufficient number of patients to characterize single-dose and multiple-dose pharmacokinetics.

Study 2: A sufficient number of patients should be enrolled to have at least 80% power to demonstrate non-inferiority of azithromycin to erythromycin for the treatment CT pneumonia using a two-sided 95% confidence interval and a pre-specified non-inferiority margin that has been justified and agreed upon by the FDA. The size of the margin should take into account historical evidence of the treatment effect of erythromycin relative to placebo for the treatment of CT pneumonia. Natural history studies show a spontaneous cure rate of 27.2% (three of 11 patients) with a corresponding 95% confidence interval (6.0%, 61%).[9] Assuming an 80% cure rate for erythromycin, the lower bound of the two-sided 95% confidence interval of the treatment effect of erythromycin relative to placebo is approximately 20%. A non-inferiority margin of 10% should be used in order to preserve a fraction of the treatment effect.

Study 4: There are two co-primary endpoints and the number of patients enrolled should fulfill both of the following: (a) A sufficient number of patients should be enrolled to have at least 80% power to demonstrate superiority of azithromycin to placebo for prevention of CT conjunctivitis and pneumonia, using an alpha level=0.05. (b) A sufficient number of patients should be enrolled to have at least 80% power to demonstrate the non-inferiority of azithromycin to placebo in the incidence of IHPS using a two-sided 95% confidence interval and a pre-specified non-inferiority margin that has been justified and agreed upon by the FDA. Based on these requirements for the IHPS endpoint, a sample size of approximately 290 evaluable patients per arm would provide at least 80% power to demonstrate the non-inferiority of azithromycin to placebo in the incidence of IHPS for up to a four-fold increase in the IHPS rate for the azithromycin group relative to placebo. The estimated placebo IHPS incidence rate is 0.19%, and the non-inferiority margin is 3%.[10] In addition, all parameter estimates used in the sample size calculation should be pre-specified and justified in the protocol.

Consideration should be given to the fact that IHPS occurs predominantly in males, and is more frequent in Caucasian and Hispanic/Latino infants than African-American and Asian infants. Investigators are strongly encouraged to enrich the study population with respect to the risk of IHPS, while at the same time assuring adequate gender, ethnic and racial distribution to allow for labeling of azithromycin for all population groups.

The protocols for these studies will be discussed with the FDA and agreed upon prior to study initiation. All measurement estimates used in sample size calculation will be specified and justified in the protocol.

*Statistical Information:* These studies must have a pre-specified detailed statistical analysis plan appropriate for the study design and outcome measures. It will be discussed with the FDA and agreed upon prior to initiating studies. Demographic and safety data other than incidence of IHPS will be tabulated, and descriptive analysis of safety data will be provided. Descriptive statistics of the pharmacokinetic data must also be provided and dose-response relationships and relationships between PK parameters and patient characteristics will also be explored.

*Assessment Parameters:*

*Pharmacokinetics:* (All studies): The plasma clearance and volume of distribution of oral azithromycin will be calculated and to the extent possible other PK parameters such as the maximum plasma concentration ($C_{max}$), time of $C_{max}$ ($T_{max}$), area under the plasma concentration-time curve from zero to the last quantifiable concentration ($AUC_{0-t}$), the elimination rate constant (Ke), terminal elimination half-life ($t_{1/2}$), and AUC extrapolated to infinity ($AUC_{0-\infty}$), should be determined. Adequate rationale for excluding any of the aforementioned PK parameters will be provided. If possible, the protein binding of azithromycin should be determined over the range of clinically relevant concentrations.

*Efficacy:* Study 2: The protocol will specify a primary endpoint to comparatively evaluate the use of oral azithromycin and oral erythromycin in treatment of chlamydial pneumonia. This must include measures of bacteriologic and clinical cure. Secondary endpoints may include duration of time required for resolution of clinical and laboratory findings, need for hospitalization, and recurrence of chlamydial infection after initial resolution, and bacteriologic and clinical cure of conjunctivitis.

Study 4: The protocol will specify oral azithromycin effectiveness, compared with placebo, for the prevention of CT conjunctivitis and pneumonia as one of the co-primary endpoints. Criteria for diagnoses of CT conjunctivitis and pneumonia will be provided in the protocol, including clinical and bacteriologic measures. Incidence of IHPS will be evaluated as the second co-primary endpoint element. Criteria for the diagnosis of IHPS will be provided in the protocol. Secondary endpoints will include comparison of individual rates of CT conjunctivitis and pneumonia in relation to oral azithromycin or placebo administration.

*Drug—Specific Safety Concerns (all studies):*

1. It is unknown whether azithromycin has an adverse events profile similar to or different than that reported for erythromycin, with respect to infantile hypertrophic pyloric stenosis.

2. Colonization and infection with other bacterial (including macrolide-resistant organisms) and non-bacterial organisms (*e.g.* fungus) may occur with azithromycin treatment.

3. Macrolides have been associated with hearing loss at high doses. The potential for hearing loss with azithromycin treatment in this population will be assessed.

*Safety (all studies):* Safety assessments will include occurrence of any adverse events (AEs), incidence of superinfections (particularly fungal infections), vital signs that include heart rate , blood pressure, respiratory rate , pulse oximetry, standard laboratory assessments of hematologic, liver and renal function, assessments of hearing, and growth (weight, length and head circumference). AEs will be followed to their resolution or stabilization. Nosocomial infection will be tracked by pathogen.

*Drug Information:*

- Dosage Form: approved age appropriate oral formulations of azithromycin and erythromycin Route of Administration: oral
- Regimen: To be determined

Selection of doses for azithromycin in Study 1 will be guided by extrapolation of data from azithromycin use in older infants, published literature and/or current medical practice. Azithromycin doses chosen for Study 2 will be guided by the results of Study 1. For Studies 1 and 2, erythromycin dose will be based on current medical practice. Selection of azithromycin doses for Study 3 will be guided by the results of Studies 1 and 2. Azithromycin doses for Study 4 will be guided by the results of the first three studies.

*Labeling that may result from the studies:* Appropriate sections of the label may be changed to incorporate the findings of the studies.

*Format of reports to be submitted:* Full study reports not previously submitted to the Agency addressing the issues outlined in this request, with full analysis, assessment, and interpretation are required. Pharmacokinetic study reports will include analytical method and assay validation, individual drug concentration-time data and individual pharmacokinetic parameters (and pharmacodynamic data when available). In addition, the reports are to include information on the representation of pediatric patients of ethnic and racial minorities. All pediatric patients enrolled in the studies should be categorized using one of the following designations for race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander or White. For ethnicity, one of the following designations must be used: Hispanic/Latino or Not Hispanic/Latino.

*Response to Written Request:* As per the Best Pharmaceuticals for Children Act, Section 3, if we do not hear from you within 30 days of the date of this Written Request, we will refer this Written Request to the Director of the NIH. If you agree to the request, then you must indicate when the pediatric studies will be initiated.

Please submit protocols for the above studies to an investigational new drug application (IND) and clearly mark your submission ''PEDIATRIC PROTOCOL SUBMITTED IN RESPONSE TO WRITTEN REQUEST'' in large font, bolded type at the beginning of the cover letter of the submission. Please notify us as soon as possible if you wish to enter into a written agreement by submitting a proposed written agreement. Clearly mark your submission ''PROPOSED WRITTEN AGREEMENT FOR PEDIATRIC STUDIES'' in large font, bolded type at the beginning of the cover letter of the submission.

Reports of the studies should be submitted as a new drug application (NDA) or as a supplement to an approved NDA with the proposed labeling changes you believe would be warranted based on the data derived from these studies. When submitting the reports, please clearly mark your submission ''SUBMISSION OF PEDIATRIC STUDY REPORTS—COMPLETE RESPONSE TO WRITTEN REQUEST'' in large font, bolded type at the beginning of the cover letter of the submission and include a copy of this letter.

If you wish to discuss any amendments to this Written Request, please submit proposed changes and the reasons for the proposed changes to your application. Submissions of proposed changes to this request should be clearly marked ''PROPOSED CHANGES IN WRITTEN REQUEST FOR PEDIATRIC STUDIES'' in large font, bolded type at the beginning of the cover letter of the submission. You will be notified in writing if any changes to this Written Request are agreed upon by the Agency.

We hope you will fulfill this pediatric study request. We look forward to working with you on this matter in order to develop additional pediatric information that may produce health benefits in the pediatric population.

[FR Doc. 04–23724 Filed 10–21–04; 8:45 am]

**BILLING CODE 4167–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1545–DR]**

### Florida; Amendment No. 11 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

**EFFECTIVE DATE:** October 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 8, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23733 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1561–DR]**

### Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

**EFFECTIVE DATE:** October 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2004:

Collier, Lee, and Miami-Dade Counties for emergency protective measures (Category B) under the Public Assistance program.

Charlotte and Sarasota Counties for emergency protective measures (Category B) under the Public Assistance program (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23735 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1561–DR]**

### Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

**EFFECTIVE DATE:** October 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2004:

Brevard, Citrus, DeSoto, Glades, Hardee, Hendry, Hernando, Highlands, Indian River, Lake, Levy, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Polk, Seminole, St. Lucie, Sumter, and Volusia Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and Public Assistance [Categories A and B], including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23736 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1561–DR]**

### Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

**EFFECTIVE DATE:** October 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2004:

Broward County for Public Assistance.

Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Jefferson, Lafayette, Madison, Nassau, St. Johns, Suwannee, Taylor, and Union Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23737 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1548–DR]**

### Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1548–DR), dated September 15, 2004, and related determinations.

**EFFECTIVE DATE:** October 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Plaquemines Parish for [Categories C–G] under the Public Assistance program (already designated for Individual Assistance and Public Assistance (Categories A and B) debris removal and emergency protective measures, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment

Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23734 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1563–DR]**

### New Jersey; Amendment No. 1 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New Jersey (FEMA–1563–DR), dated October 1, 2004, and related determinations.

**EFFECTIVE DATE:** October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 1, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23738 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1564–DR]**

### New York; Amendment No. 1 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1564–DR), dated October 1, 2004, and related determinations.

**EFFECTIVE DATE:** October 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 2004:

Cattaraugus and Orleans Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23704 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1566–DR]**

### South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of South Carolina (FEMA–1566–DR), dated October 7, 2004, and related determinations.

**EFFECTIVE DATE:** October 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 11, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–23703 Filed 10–21–04; 8:45 am]

**BILLING CODE 9110–10–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4837–D–51]**

### Delegation of Authority for Multifamily Housing Mortgage and Assistance Restructuring

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of Delegation of Authority.

**SUMMARY:** Effective October 1, 2004, the Secretary is delegating authority and responsibilities to the Assistant

Secretary for Housing-Federal Housing Commissioner that were previously administered by the Director of HUD's Office of Multifamily Housing Assistance Restructuring (OMHAR).

**EFFECTIVE DATE:** October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing—Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410–8000, telephone (202) 708–0614. (This is not a toll-free number.) Persons with hearing or speech impairment may call HUD's toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Discussion of Delegation of Authority

OMHAR was established under the Multifamily Assisted Housing Reform and Affordability Act (Title V of Public Law 105–65, approved October 27, 1997), 42 U.S.C. 1437 (MAHRA). On January 10, 2002, the President signed the Mark-to-Market Extension Act of 2001 (Title VI of Public Law 107–116), amending various programmatic and administrative provisions of MAHRA. MAHRA provides the Department with tools enabling it to restructure the mortgage financing of eligible Secretary-held or HUD-insured projects that receive project-based assistance where necessary to extend their long-term viability. The restructuring program is referred to as the Mark-to-Market program as it is designed to make the rents charged by an insured, assisted project commensurate with prevailing rents in the locality. Recognizing that some projects with above market rents might be unable to maintain economic viability if their rents were brought down to market, the legislation allows HUD to restructure a project's mortgage financing, if necessary. This enables HUD to preserve low-income housing, while the federal government saves money by reducing rent subsidies.

Section 579 of MAHRA states that OMHAR and the position of the Director of OMHAR terminate on September 30, 2004. However, section 579 provides further that on and after October 1, 2004, (1) the Department will continue to engage in restructuring activities previously administered by OMHAR through September 30, 2006, and thereafter, with respect to projects and programs for which binding commitments have been entered into prior to October 1, 2006, and (2) OMHAR's pertinent authority and responsibilities are transferred to the Secretary.

Specifically, section 579 states that subtitle A of MAHRA (titled FHA Insured Multifamily Housing Mortgage and Housing Assistance Restructuring), except for section 524 (titled Renewal of Expiring Project-Based Section 8 Contracts) is repealed effective October 1, 2006. An exception to this repeal allows HUD to continue to apply the provisions of subtitle A ''with respect to projects and programs for which binding commitments have been entered into under this Act before October 1, 2006.'' Accordingly, although MAHRA terminates OMHAR at the end of September 30, 2004, HUD's authorization to restructure mortgages will continue for a period of at least two years beyond that date.

Effective October 1, 2004, the Secretary is delegating this authority and attendant responsibilities to the Assistant Secretary for Housing-Federal Housing Commissioner. The Assistant Secretary for Housing-Federal Housing Commissioner has been overseeing the operations of OMHAR since January of 2002, when a new section 578 (titled Oversight by Federal Housing Commissioner) was included among the amendments to MAHRA. This oversight authority terminates on September 30, 2004, the same date upon which OMHAR is terminated. Upon the termination of OMHAR, responsibility for the actual conduct of the mark-to-market program will rest with the Assistant Secretary for Housing-Federal Housing, who is authorized to redelegate this authority.

## II. Authority Delegated

The Assistant Secretary for Housing-Federal Housing Commissioner is delegated the power and authority of the Secretary of HUD to carry out the provisions of MAHRA, 42 U.S.C. 1437f note, and to redelegate such authority.

This delegation supersedes and revokes all authority previously delegated to the Director of OMHAR.

**Authority:** Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 7, 2004.

**Alphonso Jackson,**

*Secretary.*

[FR Doc. 04–23697 Filed 10–21–04; 8:45 am]

**BILLING CODE 4210–32–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4901–N–43]**

## 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:** October 22, 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: October 14, 2004.

**Mark R. Johnston,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 04–23404 Filed 10–21–04; 8:45 am]

**BILLING CODE 4210–29–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4837–D–55]**

## Revocation and Redelegation of Authority: Office of Affordable Housing Preservation

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of revocation and redelegation of authority.

**SUMMARY:** Published elsewhere in today's **Federal Register**, the Secretary of HUD issued a delegation of authority

to the Assistant Secretary for Housing—Federal Housing Commissioner (Assistant Secretary) authorizing him to carry out the provisions of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA). Under this notice, the Assistant Secretary is redelegating authority to carry out provisions of MAHRA to the General Deputy Assistant Secretary—Deputy Federal Housing Commissioner (General Deputy Assistant Secretary) and to staff within the Office of Affordable Housing Preservation.

**DATES:** Effective October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing—Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410–8000, telephone (202) 708–0614. (This is not a toll-free number.) Persons with hearing or speech impairments may call HUD's toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Mark-to-Market program was established under the Multifamily Assisted Housing Reform and Affordability Act, Title V. of Public Law 105–65 (approved October 27, 1997), 42 U.S.C. 1437f note, as amended (MAHRA). Under the Mark-to-Market program, HUD is authorized to restructure the mortgage financing of projects, financed with HUD-insured or HUD-held mortgages and receiving project-based Section 8 assistance. As originally enacted, MAHRA provided for the establishment of the Office of Multifamily Housing Assistance Restructuring (OMHAR), for the purpose of administering the program. However, present amendments to MAHRA provide for the elimination of OMHAR as of September 30, 2004, and for the continuation of the Mark-to-Market program subsequent to that date.

Elsewhere in today's **Federal Register**, the Secretary has delegated to the Assistant Secretary for Housing—Federal Housing Commissioner responsibility for administering the Mark-to-Market program after September 30, 2004. For the purpose of carrying out those responsibilities, the Assistant Secretary for Housing is creating the Office of Affordable Housing Preservation (OAHP), a new office within the Office of Housing. OAHP will be responsible for carrying out HUD's Mark-to-Market program.

Under this redelegation of authority, the Assistant Secretary is redelegating authority to administer the program to the General Deputy Assistant Secretary and to various officials within OAHP.

The Office of Affordable Housing Preservation is headed by a Deputy Assistant Secretary (DAS) and an Associate Deputy Assistant Secretary (ADAS). OAHP is headquartered in Washington, DC and has two field offices; one located in Washington, DC, the other in Chicago, IL. OAHP also has staff out-stationed in New York City.

Within this redelegation, the Assistant Secretary is redelegating authority to the General Deputy Assistant Secretary; the OAHP Deputy Assistant Secretary; the OAHP Associate Deputy Assistant Secretary; OAHP Directors; OAHP Deputy Directors; the Bonds and Appeals Manager, at headquarters; and the Rehabilitation Escrow Administration Division Manager, out-stationed in New York City.

Based upon the foregoing, the Assistant Secretary for Housing hereby redelegates authority as follows:

## I. Authority Redelegated

A. The Assistant Secretary for Housing redelegates to the General Deputy Assistant Secretary (GDAS) the following authority:

All authority necessary to carry out the provisions of the Mark-to-Market Program, 42 U.S.C. 1437f note, except for the authority to issue and/or waive regulations; and except for the authority to sue and be sued.

B. The Assistant Secretary for Housing redelegates to the OAHP Deputy Assistant Secretary (DAS) and to the OAHP Associate Deputy Assistant Secretary (Associate DAS), the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer all provisions of MAHRA, including but not limited to the following:

(a) To make eligibility determinations under sections 512 and 516 of MAHRA;

(b) To enter into, modify and or extend agreements with participating administrative entities under section 513 of MAHRA;

(c) In connection with a restructuring transaction, to make rent and/or mortgage restructuring determinations under sections 514, 515, 517 and 524; and

(d) To terminate, modify or affirm any decision on appeal under MAHRA.

(3) In connection with a restructuring transaction, to modify the principal balance, payments, interest rate, and amortization period and other terms of existing FHA insured and HUD-held mortgages including any HUD or Secretary-held subordinate debt encumbering or otherwise related to a project; and to issue restructuring commitments and closing documents relating to such debt.

(4) To issue HUD forms 92264 and 92264A upon approval of a restructuring plan.

(5) In connection with a restructuring transaction, to approve transfers of physical assets.

(6) In connection with a restructuring transaction, to approve environmental assessment and compliance findings for related laws report, HUD form 4128.1.

(7) To issue a commitment to insure and endorse for insurance a mortgage note given to refinance a HUD-insured or HUD-held mortgage, pursuant to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n).

(8) For qualified nonprofits acquiring projects that are the subject of a restructuring transaction, to modify, assign or forgive debt created in the restructuring.

(9) To administer escrow accounts and modify the agreement established under the restructuring transaction, for the purpose of addressing immediate and near term rehabilitation needs of a project.

(10) To perform all source selection official duties, subject to laws, regulations, and HUD policies and procedures governing the procurement process.

(11) To administer grant programs, other than selecting a grantee as only the Assistant Secretary for Housing is authorized to function as the Grant Official for the Office of Housing.

C. The Assistant Secretary for Housing redelegates to each OAHP Director and OAHP Deputy Director, in the Field Offices and at Headquarters, the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer the following provisions of MAHRA:

(a) To make eligibility determinations under sections 512 and 516 of MAHRA;

(b) In connection with a restructuring transaction, to make rent and/or mortgage restructuring determinations under sections 514, 515, 517 and 524; and

(c) To reject or hear and decide any appeal made to the Production Office under 24 CFR 401.645 or other permissible procedure.

(3) In connection with a restructuring transaction, to modify the principal balance, payments, interest rate, and amortization period and other terms of existing FHA insured and HUD-held

mortgages including any HUD or Secretary-held subordinate debt encumbering or otherwise related to a project; and to issue restructuring commitments and closing documents relating to such debt.

(4) To issue HUD forms 92264 and 92264A upon approval of a restructuring plan.

(5) In connection with a restructuring transaction, to approve transfers of physical assets.

(6) In connection with a restructuring transaction, to approve environmental assessment and compliance findings for related laws report, HUD form 4128.1.

(7) To issue a commitment to insure and endorse for insurance a mortgage note given to refinance a HUD-insured or HUD-held mortgage, pursuant to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n).

(8) For qualified nonprofits acquiring projects that are the subject of a restructuring transaction, to modify, assign or forgive debt created in the restructuring.

D. The Assistant Secretary for Housing redelegates to the Rehabilitation Escrow Administration Manager, the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions related to the rehabilitation needs of a project that was the subject of a restructuring transaction, and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer escrow accounts and modify the agreement established under the restructuring transaction, for the purpose of addressing immediate and near term rehabilitation needs of a project.

E. The Assistant Secretary for Housing redelegates to the Bonds and Appeals Manager, the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions related to appeals under MAHRA and/or the regulations promulgated under MAHRA.

(2) To reject or hear and decide any appeal under MAHRA and/or the regulations promulgated under MAHRA except for 24 CFR 401.645

## II. Authority Excepted

The authority redelegated herein does not include the authority to issue or to waive HUD regulations. The authority redelegated herein also does not include the authority to sue or be sued.

## III. Further Redelegation

The authority redelegated herein may not be further redelegated.

**Authority:** Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 7, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 04–23698 Filed 10–21–04; 8:45 am]

**BILLING CODE 4210–27–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Availability of a Draft Environmental Assessment/Habitat Conservation Plan and Receipt of a Permit Application (Family Crisis Center) for Incidental Take of the Houston Toad

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Family Crisis Center (Applicant) has applied for an incidental take permit (TE–094076–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize incidental take of the endangered Houston toad. The proposed take would occur as a result of the construction and operation of a retail thrift store on a 1.38-acre property located on State Highway 71 in the Tahitian Village Subdivision, Bastrop County, Texas.

**DATES:** To ensure consideration, written comments must be received on or before December 21, 2004.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the Environmental Assessment/Habitat Conservation Plan (EA/HCP) may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–094076–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Clayton Napier at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the EA/HCP for the incidental take application. A determination of jeopardy or non-jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

*Applicant:* The Family Crisis Center plans to construct a retail thrift store within 5 years, on a 1.38-acre property located on State Highway 71 in the Tahitian Village Subdivision, Bastrop County, Texas. This action will eliminate 1.38-acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $2,760.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton,* Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing ''No Surprises'' assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with ''No Surprises'' assurances has been reinstated, the Service will not approve any incidental take permits or related documents containing ''No Surprises'' assurances.

**Bryan Arroyo,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 04–23619 Filed 10–21–04; 8:45 am]

**BILLING CODE 4510–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–010–1020–PK; HAG 05–0005]**

### Meeting Notice for the Southeast Oregon Resource Advisory Council

**AGENCY:** Bureau of Land Management (BLM), Lakeview District.

**SUMMARY:** The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting for all members from 8 a.m. to 5 p.m. Standard Time (ST), Thursday, November 18, 2004 and 8 a.m. to noon (ST) on Friday, November 19, 2004 at the Holiday Inn, 1249 Tapadera Ave, Ontario, Oregon 97914. Members of the public may attend the meeting in person at the Holiday Inn Lewis and Clark Meeting Rooms. The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Welcome new members, Role and Responsibilities of RAC members; 2005 Calendar Dates; RAC charter changes. Update on Steens/ Andrews RMP. Vale District weed presentation. Archeological presentation. Discussion of the subcommittee priorities and roles, meeting of subcommittees; Lakeview RMP, Timber Salvage, Wild Horses, North Lake Recreation Plan. Federal Officials' update and other issues that may come before the Council.

Friday, November 19, 2004 the SEORAC will have a field trip to the Owyhee River.

Information to be distributed to the Council members is requested in written format 10 days prior to the Council meeting. Public comment is scheduled for 9:15 a.m. (ST) on Thursday, November 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the SEORAC meeting may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site *http://www.or.blm.gov/SEOR–RAC.*

Dated: October 12, 2004.

**Steven A. Ellis,**

*District Manager.*

[FR Doc. 04–23727 Filed 10–21–04; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–190–04–1610–DS]**

### Notice of Extension of Comment Period for the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for the Clear Creek Management Area

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of Extension of Comment Period for the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (Draft RMP/Draft EIS) for the Clear Creek Management Area, Hollister Field Office, California.

**SUMMARY:** The Bureau of Land Management (BLM) announces an extension of the comment period on the Draft RMP/Draft EIS for the Clear Creek Management Area. The Original Notice of Availability issued July 19, 2004 (69FR43011) provided for a comment period to end on October 15, 2004. BLM is extending the comment period to November 15, 2004 to allow agencies and the public additional time to provide comments on the Draft RMP/ Draft EIS.

**DATES:** Comments on the Draft RMP/ Draft EIS must be received no later than November 15, 2004 at the address listed below.

**ADDRESSES:** Written comments should be sent to CCMA RMP Team, Bureau of Land Management, Hollister Field Office, 20 Hamilton Court, Hollister, CA 95023. Comments may also be sent by e-mail to *Lesly_Smith@ca.blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** George E. Hill, Assistant Field Manager, at the above address, telephone number (831) 630–5036, or e-mail; *George_Hill@ca.blm.gov.*

Dated: October 1, 2004.

**Robert E. Beehler,**

*Field Office Manager, Hollister Field Office.*

[FR Doc. 04–23662 Filed 10–21–04; 8:45 am]

BILLING CODE 4310–40–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–930–1430–ET; NVN–75235; 4–08808]**

### Public Land Order No. 7620; Withdrawal of Public Land for the Bullion Monarch Mill Site Reclamation; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws 94.21 acres of public land from surface entry and mining, for a period of 10 years, for the Bureau of Land Management to protect public health and safety, as well as the reclamation efforts of land affected by previous milling operations at the Bullion Monarch Mill Site.

**EFFECTIVE DATE:** October 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dennis J. Samuelson, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520, 775–861–6532.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (2000)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect public health and safety, as well as the reclamation efforts of land affected by previous milling operations at the Bullion Monarch Mill Site:

**Mount Diablo Meridian**

T. 19 N., R. 43 E.,
Sec. 13, lot 2, SW¼NE¼ and N½N½NW¼SE¼.

The area described contains 94.21 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714(a); 43 CFR 2310.3–3(b)(1))

Dated: October 6, 2004.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 04–23682 Filed 10–21–04; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UTU 79768]**

### Notice of Proposed Withdrawal and Notice of Public Meeting; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Department of the Interior, Central Utah Project Completion Act Office, proposes to withdraw, for a term of 20 years, approximately 6,450 acres of National Forest System lands to protect the Utah Lake and the Diamond Fork Systems. This notice segregates the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may by law be made of National Forest System lands. This notice also announces a public meeting.

**DATES:** Comments should be received on or before January 20, 2005. A public meeting is scheduled for December 1, 2004.

**ADDRESSES:** Comments should be sent to the Program Director, Central Utah Project (CUP) Completion Act Office, 302 East 1860 South, Provo, Utah 84606–7317.

**FOR FURTHER INFORMATION CONTACT:** Reed Murray, CUP Completion Act Office, 801–379–1237.

**SUPPLEMENTARY INFORMATION:** The Department of the Interior, Central Utah Project Completion Act Office, has filed an application to withdraw, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, the following described National Forest System lands from location and entry under the United States mining laws, for a period of 20 years, subject to valid existing rights:

**Salt Lake Meridian**

**Unita National Forest**

T. 7 S., R. 3 E.,
Sec. 21, SW¼NE¼SW¼.
T. 9 S., R. 3 E.,
Sec. 1, S½SW¼;
Sec. 2, SW¼NE¼ and NE¼NW¼.
T. 9 S., R. 4 E.,
Sec. 18, NE¼NE¼.
T. 8 S., R. 5 E.,
Sec. 2, lots 9, 10, 15 and 16, NE¼SE¼, and W½SE¼;
Sec. 11, W½E½;
Sec. 14, W½NE¼ and NW¼SE¼;
Sec. 22, SE¼SE¼;
Sec. 28, E½SE¼ and SW¼SE¼.
T. 9 S., R. 5 E.,
Sec. 25, NE¼NE¼ and S½S½;
Sec. 35, E½;
Sec. 36.
T. 10 S., R. 5 E.,
Sec. 2, lots 1 and 2.
T. 8 S., R. 6 E.,
Sec. 32, E½ and E½W½.
T. 9 S., R. 6 E.,
Sec. 5, lot 4 and SW¼;
Sec. 6, lots 1 and 2, and SE¼;
Sec. 7, E½;
Sec. 8, W½;
Sec. 17, W½;
Sec. 18, E½;
Sec. 19, lots 5 to 8, inclusive, lots 10, 11, and 12, E½, and E½W½;
Sec. 20, NW¼NW¼;
Sec. 30;
Sec. 31, lots 1 to10, inclusive, and NE¼NW¼.

The areas described aggregate approximately 6,450 acres in Utah County.

The purpose of the proposed withdrawal is to protect the Federal investment in the proposed Utah Lake and the Diamond Fork Systems, Bonneville Unit of the Central Utah Project.

Discretionary land use authorizations may be allowed during the segregative period, but only with the approval of an authorized office of the Forest Service and with the concurrence of an authorized officer of the Department of the Interior.

The use of a right-of-way or an interagency agreement is not considered to be a desirable or acceptable alternative.

There are no other sites where the systems could be economically constructed.

No water rights will be needed to fulfill the purpose of the requested withdrawal.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Program Director, CUP Completion Act Office.

Comments, including names and street addresses of respondents, will be available for public review at the CUP Completion Act Office, 302 East 1860 South, Provo, Utah 84606–7317, during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that a public meeting will be held to provide an opportunity for public comment regarding the proposed withdrawal. The meeting will be held at 7 p.m. on Wednesday, December 1, 2004, at the CUP Completion Act Office, 302 East 1860 South, Provo, Utah.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from October 22, 2004, in accordance with 43 CFR 2310.2(a), the lands will be segregated from location and entry under the United States mining laws, unless the application is denied or canceled or the withdrawal is approved prior to that date.

(Authority: 43 U.S.C. 1714(b)(1); 43 CFR 2310.3–1(a))

Dated: October 12, 2004.

**Kent Hoffman,**

*Deputy State Director, Division of Land and Minerals.*

[FR Doc. 04–23683 Filed 10–21–04; 8:45 am]

**BILLING CODE 4310–RK–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Fire Management Plan, Environmental Impact Statement, Bandelier National Monument, NM

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Intent to prepare an environmental assessment for the Fire Management Plan at Bandelier National Monument.

**SUMMARY:** In a Notice of Intent published August 6, 2003 (68 FR 46661), the National Park Service (NPS) announced its intent to prepare an EIS for the Fire Management Plan at Bandelier National Monument (Bandelier). The NPS has since determined that an environmental assessment (EA), rather than an EIS, is the appropriate environmental documentation for the Fire Management Plan.

**SUPPLEMENTARY INFORMATION:** The NPS had begun working on the EIS following publication of the Notice of Intent. However, internal discussions and meetings, and comments from public scoping sessions held in the New Mexico cities of Santa Fe, Los Alamos, and Albuquerque in August of 2003 resulted in substantial changes to the fire management plan alternatives proposed under the EIS. Based on these changes, the NPS determined that the appropriate National Environmental Policy Act documentation for the update and review of Bandelier's Fire Management Plan is an EA.

Through the EA process, Bandelier will revise and update the Fire Management Plan to include the following goals: (1) Provide the means for staff and the public to preserve, protect, understand, and enjoy the natural and cultural resources of Bandelier National Monument through an integrated program where management activities support naturally functioning ecosystems consistent with cultural resource preservation needs. (2) Educate, inform, consult, collaborate, and maintain cooperative fire planning with other land agencies, landowners, and local communities. (3) Achieve ecologically sustainable vegetative conditions across broad vegetation communities by restoring a natural range of variability and bio-diversity. (4) Identify and mitigate hazards related to the Wildland-Urban Interface (WUI) through coordination and collaboration with neighboring agencies and landowners over time and across boundaries.

The following fire management objectives support these goals: (1) Protect life, property, and Bandelier's natural and cultural resources from the effects of unwanted fire. (2) Prevent or mitigate impacts due to fire suppression activities. (3) Institute and maintain a comprehensive Fire Information and Education Program. (4) Restore and maintain fire-dependent ecosystems with the appropriate use of fire. (5) Use prescribed fire to meet fire and resource management goals and objectives. (6) Allow natural fires to function in fire dependent ecosystems. The new Fire Management Plan will emphasize the importance of mitigating measures to reduce effects in the Wildland/Urban Interface and maintaining a comprehensive Fire Information and Education Program.

**FOR FURTHER INFORMATION CONTACT:** Jim Whittington, Fire Information Officer, HCR 1, Box 1, Suite 15, Los Alamos, NM 87544. Telephone (505) 672–3861 x512.

Dated: August 20, 2004.

**Stephen P. Martin,**

*Director, Intermountain Region.*

[FR Doc. 04–23743 Filed 10–21–04; 8:45 am]

**BILLING CODE 4312–EW–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

### Final General Management Plan/Wilderness Study, Final Environmental Impact Statement, Pictured Rocks National Lakeshore, MI

**AGENCY:** National Park Service.

**ACTION:** Notice of Availability of the Final General Management Plan/Wilderness Study/Final Environmental Impact Statement, Pictured Rocks National Lakeshore.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* the National Park service (NPS) announces the availability of a final general management plan/wilderness study/environmental impact statement (FEIS) for Pictured Rocks National Lakeshore, Michigan.

**DATES:** The draft general management plan/wilderness study/environmental impact statement was on public review from August 29, 2003 through November 23, 2003. Public hearings were held on the draft wilderness study on August 26 at Munising, Michigan, and on August 27 at Grand Marais, Michigan. Responses to substantive public comments are addressed in the final general management plan/wilderness study/environmental impact statement. The NPS will execute a record of decision (ROD) no sooner than 30 days following publication of the Environmental Protection Agency's notice of availability of the final environmental impact statement in the **Federal Register.**

**ADDRESSES:** Copiers of the final general management plan/wilderness study/environmental impact statement are available upon request by writing Karen Gustin, Superintendent, Pictured Rocks National Lakeshore, P.O. Box 40, Munising, Michigan 49862–0040, by phone 906–387–2607, or by e-mail message at *piro__gmp@nps.gov.* The document can be picked up in person at the park's headquarters at N8391 Sand Point Road, Munising, Michigan.

**FOR FURTHER INFORMATION CONTACT:** Karen Gustin, Superintendent, Pictured Rocks National Lakeshore, or by calling 906–387–2607.

**SUPPLEMENTARY INFORMATION:** The final general management plan/wilderness study/environmental impact statement combines two planning elements and an environmental analysis that covers both the plan and the wilderness study. The general management plan (GMP) provides a framework for making decisions about and managing the national lakeshore's resources and visitor use for the next 15 years. The wilderness study explores options for wilderness designation in the national lakeshore from no wilderness to 26 percent of the park. The environmental impact statement (EIS) includes information and analysis on the potential effect of the alternatives explored in the final general management plan/wilderness study both within the national lakeshore boundaries as well as regionally. Five alternatives are examined that address wilderness as well as other visitor use and resource issues. The NPS preferred alternative would expand visitor services on the west and east ends of the park, recommend upgrading of county Road H–58, and propose the Beaver Basin (16% of the lakeshore) be designated as wilderness.

Based on the findings of the wilderness study, a formal wilderness proposal will be submitted to the Director of the NPS for approval and subsequent consideration by the Department of the Interior, President, and Congress.

Dated: July 9, 2004.

**Ernest Quintana,**

*Regional Director, Midwest Region.*

[FR Doc. 04–23745 Filed 10–21–04; 8:45 am]

**BILLING CODE 4312–52–M**

## DEPARTMENT OF THE INTERIOR

## National Park Service

### Fire Management Plan, Final Environmental Impact Statement, Whiskeytown National Recreation Area, Shasta County, CA; Notice of Approved Record of Decision

*Summary:* Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council of Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision concerning the revision of the Fire Management Plan for Whiskeytown National Recreation Area. The purpose of the fire management plan is to provide comprehensive direction for park fire management activities over the next 10 years. The selected plan prescribes goals to be achieved and the methods for achieving them during this period. The formal no-action period was officially initiated June 18, 2004, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing and availability of the Final Environmental Impact Statement.

*Decision:* As soon as practical the park will begin to implement as its updated Fire Management Plan the ''multiple strategy'' alternative (identified and analyzed in the Draft and Final EIS as Alternative IV). The selected plan will focus on restoring high elevation logged plant communities and reducing the risk of high severity wildland fire by decreasing forest stand density, reducing surface fuels, and attempting to restore fire as a natural disturbance process to the greatest extent feasible. Implementation of these strategies combines use of prescribed fire and mechanical treatment, and includes both pile and broadcast burns.

Project sizes may range from 0.5 to 1,000 acres, and will occur in all vegetation types. Up to 2,200 acres could be treated in each year of implementation. To facilitate these operations, the park's fire operations cache will be centrally located at the Oak Bottom area.

An additional component of the Draft and Final EIS was the amending of the 2001 General Management Plan (GMP), to allow for future consideration of replacing or modernizing the existing park administrative center within the park. Under the selected alternative, the park's GMP is amended to allow the park to consider construction a new administrative building at the existing park headquarters site on Kennedy Memorial Drive (subsequent environmental compliance, with opportunity for public involvement, would be necessary to address this option within a full range of alternatives).

The selected plan was determined to be the ''environmentally preferred'' alternative. Since the Fire Management Plan/Final Environmental Impact Statement is programmatic in nature, project- or site-specific mitigations may need to be developed and implemented to ensure resource protection efforts reduce or avoid adverse effects. During the fire management planning phase, subject matter experts will review evaluate existing databases and maps, and, if necessary, conduct additional surveys to field verify natural or cultural resource conditions. Additional consultation with the U.S. Fish and Wildlife Service, the California State Historic Preservation Officer, the Redding Rancheria, and others may be required and will be documented in the project planning phase.

This selected plan and three alternatives were identified and analyzed in the Draft and Final EIS. In addition to the selected alternative, the environmental analysis addressed: Alternative/No Action (the current fire management program); Alternative II Prescribed Fire Dominated (the fire program would have focused on the intentional use of fire through the application of prescribed fire to meet ecological restoration and maintenance objectives, and to reduce hazardous fuels throughout the park); and Alternative III Suppression Dominated (all natural and human-ignited wildland fires would have been suppressed). The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified for each alternative.

*Conclusion:* The selected plan (Alternative IV) provides the most comprehensive and effective method among the alternatives considered for meeting the NPS purposes, goals, and criteria for managing fire and fire risks in Whiskeytown National Recreation Area and for meeting national environmental and fire policy goals. The selection of Alternative IV, as detailed in the Fire Management Plan/Final Environmental Impact Statement, will not result in the impairment of park resources nor violate the Organic Act of 1916, and will allow the park to most effectively conserve park resources and provide for the long term enjoyment of visitors.

Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Whiskeytown National Recreation Area, P.O. Box 188, Whiskeytown, CA 96095 (530) 242–3400.

Dated: August 25, 2004.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. 04–23742 Filed 10–21–04; 8:45 am]

**BILLING CODE 4312–52–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Committee for the Preservation of the White House; Notice of Public Meeting

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 11 a.m. on Wednesday, November 17, 2004.

**DATES:** November 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242. (202) 619–6344.

**SUPPLEMENTARY INFORMATION:** It is expected that the meeting agenda will include policies, goals, and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and social security number, must be received by November 10, 2004. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline. Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: October 8, 2004.

**Ann Bowman Smith,**

*Executive Secretary, Committee for the Preservation of the White House.*

[FR Doc. 04–23741 Filed 10–21–04; 8:45 am]

**BILLING CODE 4312–54–M**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Announcement of Gates of the Arctic National Park Subsistence Resource Commission (SRC) Meeting

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gates of the Arctic National Park Subsistence Resource Commissions will be held at Fairbanks, Alaska. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

**DATES:** The meeting times are, 1. Tuesday, November 9, 2004, from 9 a.m. to approximately 5 p.m. 2. Wednesday, November 10, 2004, from 9 a.m. to approximately 5 p.m.

**SUPPLEMENTARY INFORMATION:** Locations and dates may need to be changed based on weather or local circumstances. Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. The agenda for the meeting is as follows:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Approve Agenda.
5. Review and adopt minutes from April 20–21, 2004 meeting.
6. Review Commission Purpose and Status of Membership.
7. SRC Member's Report.
8. Public and Agency Comments.
9. Superintendent's Report.
10. Access Issues—Airboats.
11. User Conflicts.
12. Durational Residency.
13. Wildlife Management Unit 24 Moose Regulations and Moose Survey Report.
14. Kobuk River Management Issues.
15. Bear Baiting.
16. Federal Subsistence Board: Wildlife and Fisheries Reports.
17. 2004 SRC Chairs Workshop Update.
18. NPS Staff Reports.
19. New Business.
20. SRC, Agency, Public Closing Comments.
21. Set time and place of next SRC meeting.
22. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from the Superintendent, Gates of the Arctic National Park and Preserve, 201 First Ave., Fairbanks, Alaska, 99701.

**FOR FURTHER INFORMATION CONTACT:** Dave Mills, Superintendent, at (907) 457–5752 or Fred Andersen, Subsistence Manager, at (907) 455–0621.

Dated: August 26, 2004.

**Marcia Blaszak,**

*Regional Director, Alaska Region.*

[FR Doc. 04–23744 Filed 10–21–04; 8:45 am]

BILLING CODE 4312–HC–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Settlement Stipulation Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 18, 2004, a proposed Settlement Agreement in *In re Federal-Mogul Global Corporation, et al.* Case No. 01–10578 (Bankr. D. Del.), was lodged with the United States Bankruptcy Court for the District of Delaware.

During negotiations regarding this bankruptcy case, the United States asserted that it has certain claims against the estates of two debtors, Federal-Mogul Corporation and Federal-Mogul Ignition Corporation. The proposed Settlement Agreement would resolve the claims of the United States, and certain state and local governments, against various debtors for the recovery of response costs, incurred at 14 sites, under Section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9604(a), and analogous state statutes. In addition, the proposed Settlement Agreement would permit governmental entities and other settlers to resolve in due course any alleged liabilities of debtors at 58 listed "Additional Sites" or any other Additional Site (*e.g.,* a presently unknown site), whether prior to or following the effective date of a confirmed reorganization plan. Any settlements reached or judgments obtained regarding Additional Sites will be paid at the rate at which general unsecured claims in the bankruptcy case will be paid. Under Debtors' proposed Third Amended Joint Plan of Reorganization, which is to be the subject of a confirmation hearing on December 9, 2004, that rate is 35%.

Under the proposed settlement, the United States will receive, on behalf of the United States Environmental Protection Agency, allowed secured claims for response costs respecting four Sites totaling $213,080.46. In addition, the United States will receive allowed general unsecured claims relating to two Sites (one of which is among the four Sites with respect to which the United States also has a secured claim) totaling $1,451,201.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Federal-Mogul Global Corporation,* DJ No. 90–11–2–770/2.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney, District of Delaware, 1007 N. Orange Street, Suite 700, Wilmington, Delaware 19801, and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, Pennsylvania 19103. During the public comment period, the Stipulation and Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Stipulation and Agreement may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In all correspondence, please refer to the case by its title and DOJ Ref #90–11–2–770/2.

**Robert D. Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04–23701 Filed 10–21–04; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Absolute Distributing, Inc.; Denial of Registration

On May 6, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Absolute Distributing, Inc. (Absolute) proposing to deny its May 12, 2003, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting Absolute's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h) and 824(a). The order also notified Absolute that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Absolute at its proposed registered location at 2005 S. 300 W., Suite C, Salt Lake City, Utah, 84115. It was received on May 10, 2004, and DEA has not received a request for a hearing or any other reply from Absolute or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Absolute has waived its hearing right. *See* Aqui Enterprises, 67 FR 12,576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 C.F.R. 1309.53(c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. *See e.g.*, Direct Wholesale, 69 FR 11,654 (2004); Branex, Inc., 69 FR 8,682 (2004); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9,997 (2002); Denver Wholesale, 67 FR 99,986 (2002).

The Deputy Administrator's review of the investigative file reveals that an application dated May 12, 2003, was submitted by Mr. David T. Milton, seeking registration to distribute ephedrine, a list I chemical product. Subsequently, Mr. Milton, the President of Absolute, asked that the application be changed to reflect the company's name as registrant.

In connection with the pending application, an on-site pre-registration investigation was conducted on August 18, 2003. Mr. Milton advised investigators that he had been solicited by Premium Oil Company (Premium) to obtain a DEA registration so that Absolute could provide ephedrine to Premium's convenience stores and gas stations, which are located throughout the State of Utah. Premium had also provided Absolute with office and storage space for ephedrine products so that Premium could have easy access to its distributor.

Premium had previously been obtaining its list I chemical products from Spencer Distributing. However, on May 22, 2003, that company surrendered its DEA registration. Mr. Milton was aware that Premium considered ephedrine products to be good sources of income, ''better than fuel,'' and the company needed Absolute to replace Spencer Distributing as its supplier.

Mr. Milton provided investigators only a generalized list of potential customers, which included almost every gas station and their associated convenience stores in the State of Utah. He could not provide a confirmed list of customers who would purchase the listed chemical products from the company. While he also intended to distribute sundry items if he obtained a DEA registration, Mr. Milton estimated that 30% of Absolute's sales would be ephedrine products.

He intended to primarily distribute 50 and 60 count bottles of list I chemical products. This form of packaging and quantities are preferred by individuals illicitly manufacturing methamphetamine. Further, one of Absolute's intended suppliers had already received two warning letters from DEA that its list I chemical products had been discovered in various illicit settings consistent with clandestine methamphetamine manufacturing.

Neither Mr. Milton nor his brother, the company's Vice-President, had any experience in handling or distributing listed chemical products. On May 1, 2003, diversion investigators had met with Mr. Milton. Among other items, they provided a copy of the DEA Chemical Handler's Manual and a notice regarding combination ephedrine and pseudoephrine products. The investigators explained how ephedrine and pseudoephedrine are used as immediate precursors for making methamphetamine and discussed the history and problems of methamphetamine in Utah.

On August 18, 2003, long after this meeting, investigators were arranging for the pre-registration inspection. At that time they asked Mr. Milton what he knew about the list I chemical products he was seeking to distribute. He replied that he knew nothing about list I chemicals and, while he had been told by investigators the product was used to manufacture methamphetamine, he had no personal proof of that fact.

On April 18, 2001, state investigators made an undercover purchase of Two-Way Max Brand Ephedrine 25 mg. tablets (60 tablets per bottle for a total of 480 dosage units) from a Premium owned gas station/convenience store in West Jordan, Utah. The total amount of ephedrine was 12 grams, which at the time was the threshold amount an individual could legally possess in Utah. The conversion included the topic of using ephedrine to manufacture methamphetamine and the employee suggested the undercover agents return daily to buy eight bottles of ephedrine so they could obtain what they needed. As discussed above Absolute intended to supply its list I chemical products to convenience stores and service stations owned by Premium.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.,* Energy Outlet, 64 FR 14,269 (1999). *See also,* Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

The Deputy Administrator finds factors four and five relevant to the pending application for registration.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on Mr. Milton's lack of knowledge regarding the laws and regulations governing handling of list I chemical products. In prior DEA decisions, this lack of experience in handling list I chemical products has been a factor in denying pending applications for registration. *See, e.g.,* Direct Wholesale, 69 FR 11,654 (2004); ANM Wholesale, 69 FR 11,652 (2004); Xtreme Enterprises, Inc., 67 FR 76,195 (2002).

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States and in the State of Utah and ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine. Operators of illicit methamphetamine laboratories regularly acquire the precursor products needed to manufacture the drug from convenience stores and gas stations which, in prior DEA decisions, have been identified as constituting the ''grey market'' for list I chemical products. Absolute's intended customer base consists entirely of such businesses.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found these establishments serve as sources for the diversion of large amounts of listed chemical products. *See, e.g.,* ANM Wholesale, 69 FR 11,652 (2004); Xtreme Enterprises, Inc., supra, 67 FR 76,195; Sinbad Distributing, 67 FR 10,232 (2002); K.V.M. Enterprises, 67 FR 70,968 (2002).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, ''[v]irtually all of the Respondent's customers, consisting of gas stations and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Xtreme Enterprises, Inc., supra, 67 FR at 76,197. As in Xtreme Enterprises, Inc., Mr. Milton's lack of a criminal record and stated intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine exclusively to the gray market.

Additionally, the Deputy Administrator is troubled by Mr. Milton's comments suggesting he still questioned whether list I chemical products are being diverted for illicit manufacturing, even after being specifically educated by DEA investigators to the contrary. His professed personal ignorance of the methamphetamine manufacturing problem in Utah suggests he is motivated by financial gain and would be unable or unwilling to comply with the responsibilities of a DEA registrant.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by Absolute Distributing, Inc., be, and it hereby is, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michelle M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23705 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. 04–38]**

## Roland F. Chalifoux, Jr., D.O.; Revocation of Registration

On April 9, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to show Cause to Roland F. Chalifoux, Jr., D.O. (Respondent) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC1457818, under 21 U.S.C. 824(a)(3), and deny his pending application for renewal of that registration pursuant to 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged in relevant part that on July 19, 2002, the Texas State Board of Medical Examiners (Medical Board) temporarily suspended Respondent's Texas medical license; that on March 20, 2003, the Texas Department of Public Safety (Department) revoked Respondent's state controlled substances registration; and that as a result, Respondent is not authorized to handle controlled substances in Texas, the state in which he maintains his DEA registration.

By letter dated May 7, 2004, the Respondent, through his legal counsel, timely requested a hearing in this matter. As part of his hearing request, the Respondent asserted that he ''* * * has a license to practice medicine in Texas [and no] action has been taken to date that has deprived him of the license.'' On May 24, 2004, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued to counsel for DEA as well as the Respondent an Order for Prehearing Statements.

In lieu of filing a Prehearing Statement, counsel for DEA filed Government's Motion for Summary Disposition and Motion to Stay the Filing of Prehearing Statements on May 25, 2004. In its motion, the Government recited the primary allegations raised in the Order to Show Cause regarding the July 2002 Temporary Suspension Order of the Medical Board suspending the Respondent's medical license and the Department's March 30, 2003 revocation of the Respondent's Texas state controlled substance registration. In support of its motions, the Government attached copies of the aforementioned Temporary Suspension Order of the Medical Board as well as the revocation notice of the Department. Accordingly, the Government argued that a motion for summary disposition is appropriate in this matter and Respondent's DEA Certicate of Registration should be revoked.

On June 15, 2004, counsel for the Respondent filed a Response to Motion for Summary Disposition. In his reply brief, the Respondent argued in relevant part that because he currently has licenses to practice in jurisdictions outside of Texas, and since the DEA registration may be utilized in any jurisdiction where a practitioner has a license, the DEA matter is ''premature.'' The Respondent further argued that the Department's revocation notice does not evidence a final action. The Respondent's reply however did not address whether he is currently authorized to handle controlled substances under Texas state law.

On June 28, 2004, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in Texas, the jurisdiction in which he is registered with DEA. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA registration be revoked. No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision, and on August 10, 2004, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration BC1457818, and is registered to handle controlled substances at a location in Arlington, Texas, as well as a second medical practice location in South Lake, Texas. As outlined above, the Respondent is currently without authorization to handle controlled substances in Texas based upon the suspension of his medical license, and most significant, the revocation of his Texas state controlled substances registration. While the Respondent has presented some evidence that he is licensed to practice medicine in jurisdictions other than Texas, there is no evidence before the Deputy Administrator that the Respondent applied for, or has been granted reinstatement of his Texas controlled substance license, the state where he holds a DEA registration.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Kanwaljit S. Serai, M.D.,* 68 FR 48943 (2003); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that the Respondent's state controlled substance license has been revoked and there is no information before the Deputy Administrator which points to the Department's revocation order having been rescinded. As a result, the Respondent is not licensed to handle controlled substances in Texas, where he is registered with DEA, and therefore, he is not entitled to maintain that registration.

In further support of his continued registration with DEA, Respondent argues that consideration should be given to his state licensure to practice medicine in jurisdictions other than Texas. However, as noted in Judge Bittner's Opinion and Recommended Decision, DEA regulations require a separate registration ''for each principal place of business or professional practice * * * where controlled substances are manufactured, distributed, imported, exported, or dispensed by a person.'' Therefore, the Respondent's assertions regarding his licensure status in jurisdictions outside of Texas are ultimately irrelevant since his DEA Certificate of Registration is for a Texas address, and he is currently not authorized to handle controlled substances in that state. *See, Layfe Robert Anthony, M.D.,* 67 FR 35582 (2002).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC1457818, issued to Roland F. Chalifoux, Jr., D.O., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23708 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 02–35]**

### Imran I. Chaudry, M.D.; Revocation and Denial of Registration

On February 6, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Imran I. Chaudry, M.D. (Respondent) at two separate addresses in Monroe, Louisiana. The Order to Show Cause notified Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC4775233, and deny any pending applications for modification or renewal of that registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for reason that Respondent's continued registration was inconsistent with the public interest.

Specifically, the Order to Show Cause alleged that in March of 2001, Respondent, (1) had been abusing the controlled substances cocaine and methamphetamine, an (2) in April of 2001, Respondent offered to purchase, and in fact purchased, approximately 14 grams of methamphetamine, for which he was arrested and charged with Possession of Methamphetamine with Intent to Distribute, and Conspiracy to Distribute Methamphetamine.

By letter dated March 5, 2002, Respondent through his legal counsel requested a hearing on the issues raised by the Order to Show Cause. Following pre-hearing procedures, a hearing was held on December 4, 2002, in Monroe, Louisiana. While both parties called witnesses to testify at the hearing, Respondent elected not to testify in his behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted written proposed findings of fact, conclusions of law, and argument.

On June 13, 2003, Administrative Law Judge Gail A. Randall (Judge Randall) issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision (Opinion and Recommended Ruling) in which she concluded that grounds existed to revoke Respondent's DEA registration, but recommended that Respondent's then-pending applications for renewal and change of registered address be granted, subject to certain conditions. On June 19, 2003, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling and on July 2, 2003, Respondent filed a response to the Government's exceptions. On August 6, 2003, Judge Randall transmitted the record of these proceedings to the Administrator of DEA.

The Deputy Administrator has considered the record in it entirety, and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. As set forth below, the Deputy Administrator adopts in part, the recommended findings of fact and conclusions of law of the Administrative Law Judge. The Deputy Administrator does not adopt the Administrative Law Judge's recommendation that Respondent's applications for renewal of registration and change of registered address be granted.

The record before the Deputy Administrator shows that as of the date of the hearing, Respondent's license to practice medicine in Louisiana was in good standing and that he possessed a then-current Louisiana narcotics license. Respondent practices medicine in the vicinity of Monroe, Louisiana as a cardiologist. In the rural area where Respondent's practice is located, the ratio of physicians to patients is approximately 1 to 2,000 to 2,500. Respondent is the only cardiologist in that community. Evidence was also presented during the hearing that, although twenty-five percent of Louisiana's citizens reside in rural areas of the state, only six percent of Louisiana's practicing primary care physicians practice medicine in rural areas.

On August 19, 1998, DEA issued Certificate of Registration BC4775233 to Respondent and that certificate expired on August 31, 2001. Nevertheless, by application dated September 4, 2001, Respondent attempted to renew the registration and modify it to reflect a new address. A Government witness testified that because Respondent submitted a renewal application, he was authorized to prescribe controlled substances within the course of legitimate medical practice on a day-to-day basis until conclusion of these proceedings. However, since he was no longer practicing at his registered address, he could not administer, store or dispense controlled substances at the unregistered location.

Around March 2001, law enforcement officers from Ouachita Parish in Louisiana received information from a source that Respondent was abusing cocaine and methamphetamine, both Schedule II controlled substances. In response, on April 24, 2001, local law enforcement personnel used a cooperating individual to engage Respondent in a controlled sale of fourteen grams of methamphetamine for $850.00. Prior to their meeting, Respondent and the cooperating individual had a series of monitored phone calls during which Respondent indicated the methamphetamine was not just for personal use, but would be shared with another physician. He requested the methamphetamine be packaged in three separate containers; two containing two grams each and a third with ten grams.

As officers watched, Respondent, who was alone, met the cooperating individual in a parking lot. While seated in adjoining vehicles, Respondent received the drugs, packaged as requested, through the open window of his car. Respondent was then immediately arrested for possession of methamphetamine with intent to distribute and conspiracy to distribute methamphetamine.

During a videotaped post-arrest interview (admitted into evidence as a Government exhibit in this proceeding), Respondent admitted purchasing and using methamphetamine three or four times during the preceding six months. He told officers the methamphetamine he was buying when arrested was for himself and another physician. He admitted obtaining methamphetamine for that same colleague on one prior occasion. Respondent claimed he was not addicted to illegal substances and that he never used drugs at any time while working.

No charges were filed against Respondent's colleague and Respondent was ultimately charged in state court with possession of methamphetamine. As of the date of the hearing before Judge Randall, a motion to suppress Respondent's post-arrest statement was then pending and no trial date had yet been set. There is no evidence in the record that Respondent was ever subsequently tried or convicted of any charges related to this incident.

After his arrest, Respondent entered the Palmetto Addiction Recovery Center (''Palmetto Center'') in Rayville, Louisiana. The Palmetto Center is approved for evaluation and treatment of substance abuse patients by the Louisiana State Board of Medical Examiners (Board). Respondent was evaluated for chemical abuse or dependency at the request of the Board.

Following the Palmetto Center evaluation, Respondent was referred to the Physician's Health Program (''PHP''). The PHP is a professional group that monitors physicians with a prior history of substance abuse. It has had a Memorandum of Understanding with the Board since 1984 and has been accepted by the Board for monitoring the evaluation and treatment of impaired physicians since August 2001. Respondent entered into a monitoring contract with PHP from October 2001 through October 2002 for the purposes of determining whether or not he had developed a chemical dependency.

During this contract period, Respondent was required to abstain from consuming any mood altering substances unless prescribed by a physician, after consultation with PHP. Respondent was randomly drug tested twice a month for the presence of over thirty-five different drugs, including methamphetamine and completed each of his ramdom drug screenings in a timely manner without missing a test. The results were all negative.

PHP also required that Respondent work with a psychiatrist on a regular basis, as well as with a licensed clinical social worker and work-site monitor. The work-site monitor saw Respondent on a daily basis and reported to PHP on Respondent's overall progress in the program, including his interaction with patients, staff and ''timeliness in responding to calls, timeliness in doing charts'' and his overall professionalism. The record in this proceeding shows Respondent never missed a session with these clinicians.

PHP's medical director testified for Respondent as an expert in addiction medicine. He testified to receiving reports every two months from the monitor and that reports on Respondent's overall interaction with staff and patients were found, among other things, to be ''exemplary.'' The director also received very favorable progress notes from the psychiatrist and the clinical social worker and neither reported any evidence of clinical disorders in Respondent. Specifically, there were no reports of any indications of substance abuse or addictive behavior from their professionals monitoring Respondent's conduct.

Respondent attended continuing medical education courses as part of his contract with PHP. Specifically, he completed a review course sponsored by the American Society of Addiction Medicine. In addition to successfully completing his one-year monitoring contract, Respondent completed his exit interview with PHP personnel and voluntarily remained in communication with PHP.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, the Deputy Administrator finds that the Louisiana State Board of Medical Examiners has not made a recommendation in this matter. However, it has not taken adverse action against Respondent's medical or narcotic licenses and he is fully licensed as a physician in Louisiana with controlled substance handling privileges in that state, despite the Board's awareness of the then-pending criminal proceedings. While this may weigh in favor of continuing his registration with DEA, ''inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration * * * this factor is not dispositive.'' *See Edson W. Redard, M.D.*, 65 FR 30616, 30619 (2000).

With regard to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, the record contains no evidence that Respondent unlawfully dispensed controlled substances during the course of his professional practice. However, on April 24, 2001, Respondent unlawfully purchased fourteen grams of methamphetamine from a cooperating individual for $850.00. He also admitted that he had unlawfully used methamphetamine three or four times in the preceding six months.

Of particular concern to the Deputy Administrator is Respondent's admission that he previously distributed methamphetamine to a fellow local physician and the evidence showing a portion of the methamphetamine he was buying when arrested was intended for distribution to that same medical colleague. Respondent's purchase, use and distribution of methamphetamine violated Louisiana and federal law and factors two and four weigh in favor of a finding that his continued registration with DEA would be inconsistent with the public interest.

Factor three, the applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances, is not relevant for consideration, as there is no evidence Respondent was ever convicted of any crime related to controlled substances.

With respect to factor five, other conduct that may threaten the public health and safety, Respondent's unlawful purchase and use of methamphetamine on prior occasions and his distribution of the controlled substance to another physician are also relevant under factor five and weigh in favor of a finding that continued registration would be inconsistent with the public interest.

As noted above, Respondent did not testify at the hearing. The Deputy Administrator may draw a negative inference from Respondent's failure to testify during the administrative hearing. *See David A. Hoxie, M.D.,* 60 FR 51477 (2004); *Alexander Drug Company, Inc.,* 66 FR 18299 (2001); *Alan L. Ager, D.P.M.,* 63 FR 54732 (1998); *Raymond A. Carlson, M.D.,* 53 FR 7424 (1988); *Antonio C. Camacho, M.D.,* 51 FR 11654 (1986). The negative inference drawn from Respondent's failure to testify is that he was unwilling to be forthright and completely honest with the Administrative Law Judge and the Drug Enforcement Administration. *See Antonio C. Camacho, M.D., supra.*

The Deputy Administrator agrees with the Government and Judge Randall that Respondent's choice in not testifying left the record silent as to possible remorse following his unlawful purchase and use of controlled substances. The Deputy Administrator also shares Judge Randall's concern about the lack of reassurances on the part of Respondent that he will not again engage in unlawful conduct with respect to controlled substances.

The Deputy Administrator agrees with Judge Randall that the Government met its prima facie burden for revoking Respondent's DEA Certificate of Registration and deny his pending requests for renewal and modification. Specifically, the Deputy Administrator agrees with Judge Randall that, ''Although not linked with his medical practices per se, the Respondent unlawfully handled methamphetamine by purchasing it for his personal use and the use of others without appropriate medical justification. Such total disregard for the law governing controlled substances can not be tolerated in a physician who has been entrusted to use his professional discretion in treating patients with these same substances.''

However, as Judge Randall notes in her Opinion and Recommended Ruling, the governing statute is discretionary. *See Mary Thomson, M.D.,* 65 FR 75969 (2000). In exercising her discretion in determining the appropriate remedy in any given case, the Deputy Administrator should consider all the facts and circumstances of the case. *See Martha Hernandez, M.D.,* 62 FR 61145 (1997).

Judge Randall concluded a lesser sanction than total revocation of respondent's DEA Certificate of Registration was warranted, based primarily on Respondent's efforts since 2001 to demonstrate continued avoidance of substance abuse and, secondarily, on his community's need for a cardiology specialist, coupled with the absence of any evidence that Respondent mishandled controlled substances in the course of his medical practice. Judge Randall recommended that the Deputy Administrator grant Respondent's application to renew his DEA Certificate of Registration and modify it to the requested new address, with the conditions that he continue participating in the PHP program for the duration of his registration period and that the results of continuing random drug tests be provided the local DEA office.

The Deputy Administrator acknowledges Respondent's positive efforts to tackle his problems. He entered himself into the Palmetto Addiction Recovery Center and was subsequently referred to PHP, where he completed an intensive one-year monitoring program for impaired physicians. It appears Respondent was compliant with all phases of the program, including submission to random urine screens designed to detect the presence of illicit drugs and alcohol. Respondent was deemed to not have a chemical dependency.

The initial findings of the Palmetto Center and Respondent's compliance with the physician monitoring program were corroborated at the hearing by the PHP medical director's testimony on Respondent's behalf. There is no evidence of any misuse of controlled substances by Respondent since his April 2001 arrest, nor is there evidence of any disciplinary action being brought against Respondent by the Louisiana State Medical Board with respect to his handling of controlled substances. However, it is also recognized that these rehabilitative steps were taken while Respondent was under the threat of state prosecution and would have been motivated, at least in part, by the impact they might have on then-pending criminal proceedings, as well as his ability to remain licensed to practice medicine.

As noted above, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling and Respondent filed a response in opposition to the Government's exceptions.

The Government took exception to Judge Randall's finding that Respondent was the only cardiologist in Rayville, Louisiana; that Judge Randall made ancillary findings regarding physician populations generally in Louisiana; and, that Judge Randall neglected to note that one of the maps in a Respondent's exhibit showed that nearly every parish in Louisiana was classified as ''medically underserved.''

There was no evidence presented in this matter that anyone other than Respondent was a licensed cardiologist practicing in Rayville, a town of approximately 4,000 people, which was the parish seat. While there was evidence that six physicians, including Respondent, practiced in the area, there was no evidence that any of them, other than Respondent, were trained, licensed or otherwise possessed credentials to practice cardiology.

The Deputy Administrator is also not persuaded by the Government's argument regarding the physician population in Louisiana, or its argument regarding the appropriate weight to be accorded evidence of maps purportedly demonstrating medically underserved parishes in Louisiana.

The Deputy Administrator finds that, regardless of any demographic showing as to what proportion of Louisiana's population is medically underserved;

such information does not detract from the fact that Respondent provides needed medical services to such an area. However, as will be discussed below, while this provides some support for maintaining registration, under the facts of this case, it also has a negative implication for continued registration.

The Government also took exception to Judge Randall's finding regarding the veracity of the random drug tests administered Respondent, especially as they relate to the detection of methamphetamine. The Government argued in part, that ''[f]rom the factual findings, it would be possible that Respondent could have taken methamphetamine many times in the month, and yet evaded detection.'' The Government further argues that the 24 to 36 hour metabolism rate for methamphetamine, in effect, creates an adequate window for a person to avoid detection when administered a drug test.

The Deputy Administrator is reluctant to apply the Government's arguments to these facts. While it is acknowledged it is ''possible'' Respondent could have taken methamphetamine and avoided detection, to accept the premise that he continued abusing would require assumptions about his conduct that are not supported by the record.

The primary aim of a ''random'' drug test is to create a level of unpredictability as to when the test will be administered. The unpredictable nature of such a test theoretically creates a disincentive for the continued use of drugs on the part of the individual being monitored. Against this backdrop, it is important to point out there is no evidence in the record raising any question as to the efficacy of the PHP drug testing program. Without such evidence, and in light of evidence of Respondent's negative drug tests, the Deputy Administrator concludes that the random nature of the PHP-administered tests served as an effective deterrent to Respondent's further drug use.

The Government also argued it would be unreasonable to reach the conclusion testified to by the PHP medical director that ''a single use of illegal drugs or even three illegal uses in a one-year period'' does not constitute evidence of chemical abuse. This argument is not particularly compelling.

The Deputy Administrator agrees with Respondent that the term ''abuse,'' as being used by the witness, was referring to the diagnosis of chemical abuse under the DSM–4, which requires certain criteria which, in the witness's opinion, were not present in Respondent's case. While the Deputy Administrator agrees with the Government that a single or multiple uses of illegal drugs can be deemed ''abuse'' in non-diagnostic terminology, Judge Randall's findings on this point were primarily credibility findings as to the expert's assessment of Respondent's lack of chemical dependency.

The Deputy Administrator considers Respondent's illicit purchase and use of methamphetamine particularly serious acts of misconduct. As the record demonstrates, Respondent was not chemically dependent. This infers that it was neither addiction nor dependency that motivated his ''street'' purchases of methamphetamine. Instead, he exercised unhindered judgment to illegally obtain and use what he as a physician, well knew to be an insidiously dangerous controlled substance and did so, according to his post-arrest interview, to enhance his sex life. This motivation to violate the law and risk his reputation and livelihood evidences a particularly cavalier and irresponsible attitude toward his responsibilities as a DEA registrant.

There is no evidence in the record that Respondent used illicit drugs while actually engaged in the practice of medicine. However, as a cardiologist, it is inferred that it was possible that he might be subject to being called on unexpectedly to treat patients experiencing serious heart problems on an emergent basis. If this had occurred while Respondent was under the influence of methamphetamine, his patients would either have been placed at risk by Respondent's impairment or, if he declined to treat them because of his drug use, they would not have been able to be seen immediately by another cardiology specialist, as Respondent was the only one in the rural area. These potential risks should have been apparent to Respondent when he elected to use methamphetamine and raise significant questions as to his judgment and ability to use sound professional discretion in treating patients with controlled substances.

Of particular concern to the Deputy Administrator is the finding that Respondent admitted previously purchasing methamhetamine and illicitly distributing it to another individual. This criminal conduct is made even more egregious because the recipient was a fellow physician. The evidence also shows that a portion of the methamphetamine Respondent was purchasing when arrested was destined for distribution to that medical colleague. Thus, in an area already undeserved by medical professionals, Respondent not only placed himself at risk, but, by distributing methamphetamine to another physician, added to the threat posed to his rural community by potentially impaired physicians.

Since his arrest, Respondent's professional practice has continued without blemish and he has avoided illicit drugs. These are commendable and indicate potential for future registration. On the other hand, Respondent's calculated abandonment of his responsibilities and willingness to risk serious criminal and professional sanctions do not auger well for continued registration being in the public interest. As observed by the Seventh Circuit Court of Appeal, ''[a]n agency rationally may conclude that past performance is the best projector of future performance.'' *ALRA Laboratories, Inc.* v. *DEA,* 54 F.3d 450, 451 (7th Cir. 1995).

Based on the foregoing, at this time, the Deputy Administrator does not have sufficient confidence that Respondent can successfully fulfill the responsibilities of a registrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), and 0.104, hereby orders that DEA Certificate of Registration BC4775233, previously issued to Imran I. Chaudry, M.D., be and it hereby is revoked. His pending application for renewal of that registration and his request to modify said registration to reflect a new requested address, are hereby denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23709 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## Juan Pillot-Costas, M.D. Revocation of Registration

On February 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Juan Pillot-Costas, M.D. (Respondent) of Ponce, Puerto Rico, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP3441475, as a practitioner, under 21 U.S.C. 824(a)(5) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Respondent had been mandatorily excluded from participating in Federal health programs pursuant to 42 U.S.C. 1320–7(a).

By letter dated March 18, 2004, Respondent, through legal counsel, requested a hearing. On April 20, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements, requiring the Government and Respondent to file prehearing statements by May 12 and June 2, 2004, respectively. The Government filed a timely prehearing statement, however, Respondent failed to file his prehearing statement by the deadline.

On June 29, 2004, Judge Randall issued a *sua sponte* Notice and Order to Respondent allowing him a limited extension of time, until July 21, 2004, to file his prehearing statement. The Notice and Order cautioned Respondent that if he failed to meet this deadline, Judge Randall would deem his inactivity to be a waiver of his hearing entitlement and that she would issue an order terminating the case. Respondent did not file a prehearing statement and on August 10, 2004, Judge Randall issued her Order terminating the proceedings. On August 26, 2004, the Office of Chief Counsel forwarded the record to the Deputy Administrator for entry of a final order based on the investigative file.

Therefore, the Deputy Administrator finds that Respondent, having requested a hearing but having failed to participate in the matter after being apprised of the consequences, is deemed to have waived his hearing right. *See Bill Lloyd Drug*, 64 FR 1823–01 (1999); *Vincent A. Piccone, M.D.*, 62 FR 62074 (1997). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration BP3441475. The Deputy Administrator further finds that as a result of Respondent's fraudulent activities, pursuant to his guilty plea, he was convicted in the United States District Court, District of Puerto Rico of one count of conspiring to solicit and receive kickbacks in relation to Medicare referrals for durable medical equipment, in violation of 18 U.S.C. 371, in addition to one count of providing false declarations before the grand jury, in violation of 18 U.S.C. 1623.

As a result of Respondent's conviction of the Medicare related count, on March 31, 2003, he was notified by the Department of Health and Human Services of his five-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Exclusion from Medicare is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5); *see Johnnie Melvin Turner, M.D.*, 67 FR 71203 (2002). The underlying conviction forming the basis for a registrant's exclusion from participating in federal health care programs need not involve controlled substances for revocation under 21 U.S.C. 824(a)(5). *See KK Pharmacy*, 64 FR 49507 (1999); *Stanley Dubin, D.D.S.*, 61 FR 60727 (1996).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP3441475, issued to Juan Pillot-Costas, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23712 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### John A. Cronk, D.O.; Revocation of Registration

On January 5, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John A. Cronk, M.D. (Dr. Cronk),[1] proposing to revoke his DEA Certificate of Registration, BC2204131, pursuant to 21 U.S.C. 824(a)(2) and (a)(4) and 823(f). Specifically, the Order to Show Cause alleged in relevant part, the following:

1. On May 21, 2003, in the Criminal District of Dallas County Texas, pursuant to a plea agreement, Dr. Cronk entered a plea of guilty to unlawfully possessing methamphetamine, a third degree felony under Texas state law. Dr. Cronk was placed on unsupervised probation for a period of five years, ordered to enroll in an inpatient drug treatment at a treatment center in Atlanta, Georgia and to pay a $1500 fine. The court directed that further proceedings be deferred in the case without entering an adjudication of guilt. The conviction was premised on Dr. Cronk's arrest for possession of methamphetamine which took place at the Dallas/Fort Worth Airport on November 28, 2002.

2. During April 2003, DEA diversion investigators received information from former and current employees of Dr. Cronk's medical office that he failed to maintain accountability of controlled substances or maintained a controlled substance log book for an extensive period. The employees further divulged that they suspected Dr. Cronk of abusing drugs during office hours and had also found on his office desk a vial containing a substance later tested and identified by a field test as methamphetamine. This test was conducted by a long-term patient of Dr. Cronk, who was also a former law enforcement officer. When confronted by that patient, Dr. Cronk admitted methamphetamine use.

3. On May 7, 2003, at the request of DEA investigators, officers of the Northeast Area Interdiction Task Force (NADITF) recovered three bags of trash from Dr. Cronk's residence in Heath, Texas. Among the items recovered were a syringe with a brown liquid substance later determined to be methamphetamine, an attached needle, and discarded pieces of mail bearing Dr. Cronk's name and address.

4. A state search warrant obtained to search Dr. Cronk's residence was then executed by NADITF officers and DEA investigators on May 9, 2003. Recovered in that search were several vials containing residual amounts of methamphetamine; forty-five tabs of methadone; two vials of testosterone; ninety-five tabs of alprazolam; thirty-six tabs of Ambien; eight tabs of Vicoprofen; six bottles of Lortab elixir; five bottles of Histex; six tabs of ecstasy; several marijuana cigarette butts; $9,911.00 in cash; and, over 200 blood collection vials which had been converted to methemphetamine pipes, along with other drug paraphernalia.

5. On May 15, 2003, DEA investigators arrived at Dr. Cronk's office in Quinlan, Texas (which was also Dr. Cronk's DEA registered location) to conduct an audit of controlled substances. Dr. Cronk was not present during, but his office manager nevertheless signed a DEA

[1] While the Order to Show Cause includes ''M.D.'' as part of Dr. Cronk's professional title, DEA investigative reports and other supporting documentation refer to his professional title as ''D.O.'' Given these references to the ''D.O.'' professional designation, the Deputy Administrator will refer to Dr. Cronk in a similar fashion.

Notice of Inspection. Because controlled substance records were not at this registered location Dr. Cronk was requested to come to the office and bring the records. Dr. Cronk responded and brought his remaining records to DEA investigators for their inspection.

6. Among the records provided was Dr. Cronk's controlled substance log, with the last entry in the log dated August 15, 2002. Dr. Cronk also produced an assortment of box tops, sample boxes, and other assorted pieces of paper and notes, including post-its, which he claimed were records of what had been dispensed to patients. Several of those boxes had multiple entries on them.

7. In the estimation of DEA investigators, Dr. Cronk's records were inaccurate, incomplete or irretrievable, thus making it impossible for them to conduct an audit of controlled substances. Dr. Cronk admitted his records were not in compliance with DEA requirements, that he was unaware of the requirement to conduct inventories of all controlled substances on hand every two years, and that he had not accomplished such inventories.

The Order to Show Cause was sent by certified mail to Dr. Cronk at his registered location in Quinlan, Texas and was accepted on his behalf on January 15, 2004. Despite subsequent written and verbal contacts by Dr. Cronk's office to the DEA Dallas Field Division, the agency's Office of Chief Counsel, as well as DEA Office of the Administrative Law Judges, there is no record of any request for a hearing having been received on behalf of Dr. Cronk.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record, and (2) no request for hearing having been received, concludes that Dr. Cronk is deemed to have waived his hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Cronk is currently registered with DEA as a practitioner. According to information received subsequent to the issuance of the aforementioned Order to Show Cause, on March 15, 2004, Dr. Cronk entered into an Agreed Order with the Texas State Board of Medical Examiners (Board). As recited in the Order to Show Cause, the Board similarly found that on May 21, 2003, Dr. Cronk ''* * * pled guilty to charges of possession of the controlled substance methamphetamine, a third degree felony. Conditions of [Dr. Cronk's plea] agreement included entrance to drug treatment * * *, probation for 5 years, fine of $1,300 and random drug screens.'' The Board cited additional concerns regarding Dr. Cronk's ''* * * unprofessional conduct, disciplinary action by [his] peers, and non-therapeutic prescribing.''

Accordingly, Dr. Cronk and the Board agreed, *inter alia,* that Dr. Cronk's state medical license be suspended until he demonstrated his fitness to safely practice medicine and completed various terms and conditions for reinstatement. Included among the Board imposed conditions was the requirement that Dr. Cronk complete psychological and neuro-psychiatric evaluations conducted by or under the direction of an approved psychiatrist to evaluate Dr. Cronk for substance abuse or an organic mental condition. More importantly, the Board specified that Dr. Cronk was to ''immediately cease from the practice of medicine in Texas.''

There is no evidence before the Deputy Administrator that Dr. Cronk has satisfied the conditions of the Board for reinstatement of his medical license, or that the Board suspension order has been stayed or lifted. In light of the suspension of his authorization to practice medicine in Texas, the Deputy Administrator also finds it reasonable to infer that Dr. Cronk is also without authorization to handled controlled substances in that state. As a result, Dr. Cronk is not entitled to maintain a DEA registration in Texas. *See, Miles J. Jones, M.D.,* 69 FR 40655 (2004); *Saihb S. Halil, M.D.,* 64 FR 33319, 3320 (1999).

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration is she finds that the registrant has had his state license revoked or suspended and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pelkowski, D.D.S.,* 57 FR 28538 (1992). Nevertheless, despite findings of the Board regarding Dr. Cronk's felony conviction with respect to his unlawful possession of controlled substances, and notwithstanding the other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of Dr. Cronk's state authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substance Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *Daniel A. Maynard, D.O.,* 69 FR 22563 (2004); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1998).

Here, it is clear that Dr. Cronk's Texas medical license has been suspended and by inference, he is currently not authorized under Texas law to handle controlled substances in his medical practice. Therefore, he is not entitled to a DEA registration in that state. As a result of a finding that Dr. Cronk lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Rory Patrick Doyle, M.D.,* 69 FR 11655 (2004); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC2204131, issued to John A. Cronk, D.O., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

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**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. 03–05]**

## Express Wholesale Denial of Application

On September 27, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Express Wholesale (Respondent) proposing to deny its application for a DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged in relevant part that granting the application of Respondent would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Gail A. Randall. Following prehearing procedures, a hearing was held in Oklahoma City, Oklahoma on October 21–22, 2003. At the hearing both parties called witnesses to testify and introduced documentary evidence. Subsequently both parties filed Proposed Findings of Fact, Conclusions of Law, and Argument.

On May 18, 2004, Judge Randall issued her Recommended Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's application for a Certificate of Registration as a distributor of listed chemical products be denied. Neither party filed exceptions to the Opinion and Recommended Ruling and on June 24, 2004, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or any failure to mention a matter of fact or law.

By application dated August 23, 2001, Mr. Terry H. Kim, owner of Express Wholesale, located at 1913 Dyer Drive, Moore, Oklahoma, submitted an application for a DEA Certificate of Registration as a distributor of list I chemicals, seeking authority to distribute pseudoephedrine and phenylpropanolamine.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. At the time that Respondent submitted its application for DEA registration, phenylpropanolamine, also a list I chemical, was a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. *See e.g., Direct Wholesale,* 69 FR 11,654 (2004); *Branex, Inc.,* 69 FR 8682 (2004); *Yemen Wholesale Tobacco and Candy Supply, Inc.,* 67 FR 9997 (2002); *Denver Wholesale,* 67 FR 99,986 (2002).

On February 5, 2002, a DEA diversion investigator conducted a pre-registration inspection at Respondent's proposed registered location. It was situated in the residential duplex where Mr. Kim lives. He indicated he would store the listed chemical products in one-half of the unit's two-car garage, which did not have an internal secure storage container.

During the visit, the investigator provided Mr. Kim with a copy of DEA regulations and reference materials commonly referred to as the ''Red Sheet'' and the ''Green Sheet.'' These documents direct an applicant's attention to matters involving the diversion of ephedrine, pseudoephedrine and phenylpropanolamine to the illicit production of amphetamine and methamphetamine. The investigator additionally explained the meaning of both notices to Mr. Kim and asked if he had any questions about the notices.

When asked what products he intended to sell, Mr. Kim mentioned only Max Brand Pseudo 60 (''Max Brand'') and indicated that Max Brand would make up 30% of Respondent's overall business. He then asked the investigator if that was ''too much.'' After the on-site visit, Mr. Kim called the investigator several times inquiring as to the status of the application and stated he was losing business and customers because he could not provide them with the Max Brand product.

Mr. Kim also provided a customer list during the inspection and the investigator recognized many of the intended customers through her work on an unrelated criminal investigation during which she had visited 50 to 75 convenience stores in Oklahoma City, Oklahoma and Dallas, Texas. After being apprised the investigator was having problems confirming customers on his list, about a month later, Mr. Kim sent a supplemental list, which was shorter and had some different customers.

The investigator again recognized some of the store names as being involved with on-going criminal investigations. Several of the prospective customers were also on lists provided by other distributors with pending applications or were customers of current registrants. A significant portion of Respondent's prospective customers were convenience stores and gas stations.

During a brief follow-up visit on February 20, 2002, the investigator confirmed that Mr. Kim had now installed a wooden, padlocked storage container in the garage. The investigator concluded this would afford adequate physical security for storage of the list I chemical products.

Respondent's business consists primarily of supplying general merchandise to convenience stores and gas stations. When he began the registration application process, Mr. Kim was not aware that pseudoephedrine was used to manufacture methamphetamine. While Mr. Kim indicated he was aware of, and willing to abide by all requirements levied upon a DEA registrant, his testimony at the hearing reflected uncertainty as to his actual understanding of those requirements.

Mr. Kim did agree to exclude Max Brand from the product list if the application was granted. He also furnished 48 signed ''form letter'' type statements from owners or representatives of retail outlets in the Oklahoma City area, indicating they supported Respondent's DEA registration and would use its products only for legitimate purposes.

Methamphetamine use is a growing problem in the State of Oklahoma and pseudophedrine and ephedrine are combined with other products to manufacture methamphetamine. Convenience stores have been the primary source for the pseudoephedrine and ephedrine used in the illicit manufacturing of methamphetamine in the Oklahoma City area and some of these convenience stores are supplied through different wholesale distributors.

Max Brand Pseudo 60 is the precursor product predominantly encountered and seized at clandestine methamphetamine laboratories. Convenience stores are also the primary source for the purchase of the Max Brand products, which are the preferred brand for use by illicit methamphetamine producers and users. Large, nationally recognized chains such as Wal-Mart and Eckerd do not usually carry Max Brand products. While the record is unclear as to quantity and strength of products, in

Oklahoma City, Max Brand typically retailed for approximately $17.00 per bottle while other name brand cold and sinus products such as Tylenol, typically retailed for approximately $5.00 per bottle. Although local law enforcement officials in Oklahoma consider Max Brand the product of predominant concern, other brands have been discovered at area clandestine laboratories, including Action Brand, Bolt, Equate and Roxanne.

By declaration, the Government presented an expert witness in the area of statistical analysis of convenience stores and their sale of pseudoephedrine. Mr. Jonathan Robbin, a consultant in marketing information systems and databases, presented his evidence on behalf of the government as an expert in statistical analysis and quantitative marketing research. With respect to the expert analysis by Mr. Robbin, the Deputy Administrator adopts the following findings of fact, as set forth in Judge Randall's Opinion and Recommended Ruling.

Using the 1997 United States Economic Census of Retail Trade, Mr. Robbin tabulated data indicating that ''over 97% of all sales of non-prescription drug products,'' including non-prescription cough, cold and nasal congestion remedies, occur in drug stores and pharmacies, supermarkets, large discount merchandisers, mail-order houses and through electronic shopping. He characterized these five retail industries as ''the traditional marketplace where such goods are purchases by ordinary customers.''

Analyzing national sales data specific to over-the-counter, non-prescription drugs containing pseudoephedrine, Mr. Robbin characterized convenience stores as a ''nontraditional market'' for the sale of such products. His research and analysis show ''that a very small percentage of the sales of such goods occur in convenience stores—only about 2.6% of the HABC [Health and Beauty Care] category of merchandise or 0.05% of total in-store (non-gasoline) sales.'' He concluded that ''[c]onvenience stores, therefore, definitely constitute a 'non-traditional' market for the sale of over-the-counter, non-prescription drug pseudoephedrine products.''

He explained that this information supports DEA's conclusion that pseudoephedrine products distributed to this nontraditional market greatly exceeded the normal demand for such products at such retail outlets. He agreed that such excessive sales could be purchases of listed chemical products that were diverted to illicit uses.

With respect to Oklahoma wholesale pseudoephedrine sales of several distributors and over 300 of their retail customers, all of which were convenience stores, a July 2002 analysis by Mr. Robbin led to the conclusion ''that without evidence of the existence of immense numbers of legitimate customers, it was likely that the massive inventories of pseudoephedrine products purchased by these Oklahoma stores were being turned to illegal uses.''

In connection with Respondent's prospective customer list, Mr. Robbin also analyzed data accumulated from prior DEA cases regarding wholesale sales of pseudoephedrine products to convenience store retailers in Oklahoma. He found that more than two-thirds of Respondent's proposed customers had previously acquired ''excessive amounts of listed chemical products from one or more sources.'' He further opined that a large number of the stores from Respondent's list were not ''in the normal or traditional range of expectation in regard to the stocking and presumed sale of pseudoephedrine (Hcl) tablets.''

Four of the stores show an index of actual purchase rates of pseudoephedrine tablets in excess of 100% over the expected purchase rate. One store purchased a quantity valued at 208.9% over the expected legitimate purchase rate for such products. Given the small size of most convenience stores and the normal purchases of legitimate customers, Mr. Robbin concluded that ''[s]uch values are not possible in the normal commerce of these goods * * *''

He also concluded that the data pertaining to Respondent's proposed customer list indicates Respondent ''will predominantly serve retailers who already acquire excessive amounts of product from multiple sources'' and that Mr. Robbin's analysis clearly showed Respondent would not be selling listed chemical products to the traditional market for such over-the-counter drug products.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, state, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.*, Direct Wholesale, 69 FR 11,654; Energy Outlet, 64 FR 14,269 (1999); Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

The Deputy Administrator finds factors one, four and five relevant to Respondent's pending registration application.

As to factor one, maintenance by the applicant of effective controls against diversion, the Deputy Administrator agrees with Judge Randall that the physical security of the proposed storage arrangement was adequate. However, DEA has previously held that registrants have a responsibility to maintain controls against diversion, beyond the confines of the mere physical security afforded the product. *See*, OTC Distribution Co., 68 FR 70,538 (2003).

Judge Randall found the record devoid of any indication that Mr. Kim had contemplated any measures by which he could ensure that potential customers would not acquire excessive listed chemical products that would ultimately be diverted. Lacking any business practices or systems that would act as a detection system, she concluded ''Respondent would be unable to effectively monitor suspicious purchase orders to alert him to the need to inquire as to the possibility of a proposed illicit distribution of the listed chemical product, or to alert him to the need to report such illicit distribution to the DEA.''

The evidence also failed to demonstrate that Mr. Kim grasped the need for monitoring the packaging of the listed chemical product he planned to distribute. The Deputy Administrator agrees with Judge Randall that ''DEA has legitimate concerns if a distributor elects to sell such bottles of listed chemical product, versus if a distributor elects to sell such product marketed in small quantity, blister packs.''

Accordingly, particularly given Respondent's lack of a plan for a business monitoring system, factor one weights against registration

As to factors two and three, there is no evidence that Mr. Kim has any criminal record or evidence that he violated any laws, which weighs in favor of granting the application.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator agrees with Judge Randall that the record demonstrates Mr. Kim lacks experience and knowledge in the distribution of listed chemical products. While he has offered assurances that he now knows the risks involved in handling listed chemical products, the absence of an adequate business plan to minimize the risk to the general public is significant.

In prior DEA decisions, this lack of experience in handling list I chemical products has been a factor in denying pending applications for DEA registration. *See e.g.*, Direct Wholesale, 69 FR 11,654 (2004); ANM Wholesale, 69 FR 11,652 (2004); Xtreme Enterprises, Inc., 67 FR 76,195 (2002). The Deputy Administrator agrees with Judge Randall that this factor weights against granting Respondent's application for registration.

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States and specifically in the State of Oklahoma. Pseudoephedrine and ephedrine are the precursor products used to manufacture methamphetamine and users predominantly have acquired the precursor products needed to manufacture the drug from convenience stores and gas stations.

The Deputy Administrator specifically concurs with Judge Randall's finding that Max Brand is the product preferred by illicit methamphetamine manufacturers and users. Also, while Mr. Kim made a belated gesture in agreeing to eliminate Max Brand from his product list, it is only one of multiple precursor products used to manufacture the drug and the same public interest factors apply to other brands as well. As recognized by Judge Randall, ''merely declining to sell the Max Brand product is not enough to outweight the other public interest concerns that must be taken into consideration here.''

While Mr. Kim has not been involved in the manufacturing of methamphetamine, the majority of his proposed customers operate convenience stores and gas stations. As noted by Judge Randall, the Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, ''[v]irtually all of the respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Extreme Enterprises, Inc., supra, 67 FR at 76,197. As in Xtreme Enterprises, Inc., Mr. Kim's lack of a criminal record, compliance with the law and a willingness to upgrade physical security are far outweighed by his lack of experience and his intent to sell ephedrine almost exclusively in the gray market. Id.

The Deputy Administrator additionally takes notice that after the hearing on this matter concluded, Oklahoma enacted House Bill 2176, titled the ''Oklahoma Methamphetamine Reduction Act of 2004.'' Under this statute, which was signed on and made effective as of April 6, 2004, among its provisions, the sale of pseudoephedrine tables is now restricted to licensed pharmacies. Accordingly, Respondent's proposed base of Oklahoma customers in no longer legally viable.

Among the listed chemical products Respondent intends to distribute is phenylpropanolamine. As did Judge Randall, the Deputy Administrator also finds factor five relevant to the request to distribute phenylpropanolamine and apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. *See* ANM Wholesale, 69 FR 11,652 (2004); William E. ''Bill'' Smith d/b/a/ B & B Wholesale, 69 FR 22,559 (2004); Shani Distributors, 68 FR 62,324 (2003).

Based on the foregoing, the Deputy Administrator concludes that granting the pending application of Respondent would be inconsistent with the public interest. As discussed by Judge Randall, DEA is justified in registering only those applicants who grasp the severity of the problem and understand and can implement controls to stop diversion of listed chemical products. Notwithstanding the loss of his customer base as a result of state legislative action, the record here falls woefully short of establishing that Mr. Kim has the requisite level of understanding, ability or willingness to establish and maintain business controls and procedures adequate to prevent diversion of listed chemical products.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for a DEA Certificate of Registration, previously submitted by Express Wholesale be, and it hereby is, denied. This order effective November 22, 2004.

Dated: October 5, 2004

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23707 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## J & S Distributors; Denial of Application

On August 11, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to J & S Distributors (J & S) proposing to deny its application, executed on August 30, 2000, for DEA Certificate of registration as a distributor of List I chemicals. The Order to Show Cause alleged in relevant part that granting the application of J & S would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a). The Order to Show Cause also notified J & S that should not request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to J & S Distributors at its proposed registered location in Louisville, Kentucky. The return receipt indicated the Order to Show Cause was received on August 18, 2003, by Jeffrey D. Guernsey, president and owner of J & S. DEA has not received a request for hearing or any other reply from J & S or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for hearing having been received, concludes that J & S has waived its hearing right. *See* Aqui Enterprises, 67 FR 12,576 (2002). After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2004). The Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. At the time that J & S Distributors submitted its application for DEA registration, phenylpropanolamine, also a List I chemical, was a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used in the illicit manufacture of methamphetamine and amphetamine. As noted in previous DEA final orders, Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. *See e.g.,* Direct Wholesale, 69 FR 11,654 (2004); Yemen Wholesale tobacco and Candy Supply, Inc., 67 FR 9997 (2002); Denver Wholesale, 67 FR 99,986 (2002).

The Deputy Administrator's review of the investigative file reveals that on August 30, 2000, J & S submitted an application for DEA registration as a distributor of the List I chemicals epheedrine, pseudoephedrine and phenylpropanolamine. The application was submitted on behalf of J & S by Jeffrey Guernsey. There is no information before the Deputy Administrator that J & S had sought to modify its pending application with respect to any of the listed chemical products it proposes to distribute. Upon receipt of the application, the DEA Louisville District Office initiated a pre-registration investigation of J & S in September of 2000.

According to the investigative file, during DEA's initial pre-registration inspection of J & S, the firm had no office or warehouse to conduct its business, and therefore, DEA was unable to immediately accomplish an inspection. However, DEA investigators conducted a second on-site pre-registration inspection of J & S on April 2, 2001, when the firm subsequently secured office and storage space in the vicinity of Louisville.

DEA's investigation revealed that J & S is a sole proprietorship operated by Jeffrey Guernsey, along with this father David Guernsey. The company is a wholesale distributor of key chains, pens, ceramics, lighters and commemorative items. Mr. Guernsey provided DEA with a product list of predominantly novelty items. A few ephedra based non-drug products were on the list. However, no health and beauty aids or non-regulated cough and cold products were included in their product list.

According to the DEA investigative file, Jeffrey Guernsey provided DEA investigators with a ''customer master list'' indicating he had 270 customers in about twenty states. Mr. Guernsey indicated he would acquire product directly from three manufacturers and further proposed to ship listed chemicals to those on his customer list by parcel service or truck shipment.

DEA investigators contacted several purported customers of J & S, who indicated they did do business with the company. However, none of these customers expressed any intention of purchasing listed chemical products from J & S.

DEA's subsequent review of the company's ''customer master file list'' revealed those entities were predominantly distributors or wholesalers located in other states. Of the customers listed, several did not have DEA registrations to handle List I chemical products, four had their DEA registrations revoked or suspended, another four were the subject of pending DEA registration actions, and another ten were known to DEA to be already receiving similar listed chemical products form multiple wholesale distributors. None of these wholesalers had any known retail customers other than convenience stores or gas stations.

In support of J & S' pending application for registration, on March 30, 2001, Jeffrey Guernsey sent DEA a ''Letter of Compliance'' along with a copy of the company's ''return policy on List I Chemicals.'' The letter was signed by Jeffrey Guernsey as President and David L Guernsey, who listed himself as ''Consultant.'' The letter outlined the experience of certain members of the Guernsey family in handling listed chemical products. However, Jeffrey Guernsey did not provide information as to any experience he personally had with List I products.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.,* Energy Outlet, 64 FR 14,269 (1999); Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

The Deputy Administrator finds factors four and five relevant to J & S' pending registration application.

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant to Jeffrey Guernsey's apparent lack of experience in the handling of List I chemical products. The DEA investigative files shows that J & S is a retailer of general merchandise. While Jeffrey Guernsey provided information to DEA about members of his family who had experience in the handling of listed chemicals, it is unclear what role, if any, these family members would have in J & S' overall operation. Jeffrey Guernsey, J & S' sole proprietor and president, appears to be company's primary operator and he has not demonstrated that he possesses any previous experience handling listed chemical products. In prior DEA decisions, lack of experience in handling List I chemicals was a factor in determinations to deny applications for DEA registration. *See,* K&Z Enterprises, 69 FR 51,475 (2004); Matthew D. Graham, 67 FR 10,229 (2002); Xtreme Enterprises, Inc., 67 FR 76,195 (2002). Therefore, this factor similarly weights against granting J & S' application.

With respect to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor relevant to J & S' proposal to distribute listed chemical products to customers who have engaged in questionable business practices. As noted above, several of J & S' proposed customers have had DEA registrations revoked or suspended, or are already receiving listed chemical products from multiple wholesale distributors. In addition, many of these purported customers have expressed no desire to purchase listed chemical products from J & S and the wholesalers distribute listed chemical products primarily to convenience stores and gas stations. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that business establishments such as gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See, e.g.,* Sinbad Distributing, 67 FR 10,232 (2002); K.V.M. Enterprises, 67 FR 70,968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); Xtreme Enterprises, Inc., supra.

As noted above, there is no evidence in the investigative file that J & S has sought to modify its pending application with regard to the listed chemical products it seeks to distribute. Among the listed chemical products the firm intends to distribute is phenylpropanolamine. Accordingly, the Deputy Administrator also finds factor five relevant to J & S' request to distribute phenylpropanolamine and the apparent lack of safety associated with the use that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. *See* William E. ''Bill'' Smith d/b/a B&B Wholesale, 69 FR 22,559 (2004); Shani Distributors, 68 FR 62,324 (2003). Based on the foregoing, the Deputy Administrator concludes that granting the pending application of J & S would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by J & S Distributors be, and it hereby is, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23706 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 04–40]**

### Sarfraz Mirza, M.D. Revocation of Registration

On March 2, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Sarfraz Mirza, M.D. (Respondent) of Melbourne, FL, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AM8413813, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that the Florida Department of Health had ordered an immediate suspension of Respondent's license to practice medicine in Florida and accordingly, he was not authorized to handle controlled substances in the state in which he is registered.

On May 17, 2004, through counsel, Respondent timely requested a hearing in this matter. On May 25, 2004, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued the Government, as well as Respondent, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Disposition. The Government argued Respondent was without authorization to handle controlled substances in the State of Florida, and as a result, further proceedings in the matter were not required. Attached to the Government's motion was a copy of the State of Florida, Department of Health's Order of Emergency Suspension of License, indefinitely suspending Respondent's license to practice medicine in Florida, effective as of July 29, 2003.

On June 4, 2003, Judge Bittner issued a Memorandum to Counsel, staying the filing of prehearing statements and giving Respondent an opportunity to respond to the Government's motion. Respondent failed to file a response to the motion.

On August 10, 2004, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition, finding the Respondent lacked authorization to handle controlled substances in Florida, the jurisdiction in which he is registered. Judge Bittner recommended that Respondent's DEA registration be revoked and any pending applications for renewal or modification of that registration be denied. No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision and on September 15, 2004, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent holds DEA Certificate of Registration, AM8413813. The Deputy Administrator further finds that, effective as of July 29, 2003, the State of Florida, Department of Health issued its Order of Emergency Suspension of License, suspending Respondent's authority to practice as a physician in the State of Florida. There is no evidence in the record indicating that this suspension has been lifted, stayed or that Respondent's license has been reinstated. As a result, he is not currently authorized to prescribe, dispense, administer, or otherwise handle controlled substances in the State of Florida, his place of DEA registration.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 924(a)(3). This prerequisite has been consistently upheld. See Karen Joe Smiley, M.D., 68 FR 48,944 (2003); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Revocation is also appropriate when a state license has been suspended, but with a possibility of future reactivation. See Anne Lazar Thorn, M.D., 62 FR 12,847 (1997).

Here, it is clear Respondent currently lacks authority to handle controlled substances in Florida, the state in which he is registered with DEA as a practitioner. Therrefore, DEA does not have authority to maintain Respondent's DEA Certificate of Registration for his Florida practice or to grant any pending applications for renewal or modification of that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM8413813, issued to Safraz Mirza, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23717 Filed–10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 04–34]**

### Richard Daniel Price, MD.; Revocation of Registration

On March 15, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard Daniel Price, M.D. (Dr. Price) of Birmingham, Alabama, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BP4769949, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Price's license to practice medicine in Alabama had been revoked and accordingly, he was not authorized to handle controlled substances in Alabama, the state in which he is registered.

On May 3, 2004, Dr. Price, acting *pro se,* timely requested a hearing in this matter. On May 5, 2004, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued the Government, as well as Dr. Price, an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed its Motion for Summary Judgment and to Stay the Time to File Prehearing Statements if Necessary. The Government argued Dr. Price's license to practice medicine in Alabama had been revoked, that he was without authorization to handle controlled substances in that state and, as a result, further proceedings in the matter were not required. Attached to the government's motion was a copy of the Alabama Medical Licensure Commission's Order of March 31, 2003, revoking Dr. Price's license to practice medicine in that state.

On May 13, 2004, Judge Bittner issued an Order and Notice providing Dr. Price an opportunity to respond to the Government's motion. Dr. Price did not file a response. On June 28, 2004, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Judgment, finding Dr. Price lacked authorization to handle controlled substances in Alabama, the jurisdiction in which he is registered. Judge Bittner recommended that Dr. Price's DEA registration be revoked and any pending applications for renewal or modification of that registration be denied. No exceptions were filed by either party to the Opinion and Recommended Decision and on August 10, 2004, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Dr. Price holds DEA Certificate of Registration, BP4769949, which expires on March 31, 2005. The Deputy Administrator further finds that, effective as of March 31, 2003, the Medical Licensure Commission of Alabama revoked Dr. Price's Alabama medical license based on his conviction of a felony, a violation of Alabama Code 34–24–360(5) (1997). There is no evidence in the record indicating that the Commission's order has been stayed or rescinded or that Dr. Price's license has been reinstated. Therefore, the Deputy Administrator finds that Dr. Price is currently not licensed to practice medicine in Alabama and, as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Kanwaljit S. Serai, M.D.,* 68 FR 48943 (2003); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that Dr. Price is not currently authorized to handle controlled substances in Alabama, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BP4769949, issued to Richard Daniel Price, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification or such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23711 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Ivan D. Garcia-Ramirez, M.D.; Revocation of Registration

On August 11, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ivan D. Garcia-Ramirez, M.D. (Respondent), proposing to evoke his DEA Certificate of Registration, BG2485173, pursuant to 21 U.S.C. 824(a)(2) and 824(a)(4). The Order to Show Cause alleged that Respondent had been convicted of a felony related to controlled substances and that his continued registration would be inconsistent with the public interest.

By letter dated September 10, 2003, Respondent, through his counsel, requested a hearing and on September 30, 2003, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued the Government, as well as Respondent, an Order for Prehearing Statements.

On October 2, 2003, the Government timely filed its prehearing statement. However, Respondent failed to file a prehearing statement and on December 5, 2003, Judge Bittner issued an Order Terminating Proceedings, noting Respondent's lack of response was considered a waiver of his right to hearing.

Therefore, the Deputy Administrator finds as follows: (1) Respondent requested a hearing; (2) he was directed to file a prehearing statement and cautioned that failure to comply with that order could be considered a waiver of hearing and an implied withdrawal of his request for hearing; and (3) Respondent failed to submit a prehearing statement. The Deputy Administrator therefore concludes Respondent is deemed to have waived his hearing right and, after considering material from the investigative file in this matter, now enters her final order without a hearing, pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

Respondent is currently registered with DEA as a practitioner under Certificate of Registration number BG2485173, at a registered location in Mayaguez, Puerto Rico. That registration expires on September 30, 2005.

According to information in the investigative file, in November 2001, Special Agents from the DEA San Juan Field Office received information that the Sea Brave, a Puerto Rico registered vessel owned by Respondent, may have been used in the trafficking of controlled substances in St. Maarten, Netherlands Antilles. The same information was communicated to Dutch Customs, which placed a lookout for Respondent's vessel.

On June 16, 2002, the Dutch Coast Guard observed the Sea Brave outside the St. Maarten harbor channel. Dutch authorities instructed the vessel return to the marina, inside St. Maarten territorial waters,where it was boarded by Dutch authorities. At the time of boarding, Respondent was on board, along with two others. Upon search of the vessel by Dutch Customs officers, 549 grams of heroin were recovered from a hidden compartment in the cabin area and all individuals on board were arrested and taken to the St. Maarten Police Station.

When questioned the next day, Respondent admitted being told by an individual that at least nine kilograms of cocaine and six kilograms of heroin had been placed on board the Sea Brave. Further he admitted seeing an individual place two boxes and eighty pellets of suspected heroin inside a hidden compartment, behind a television set on board the vessel. Upon receipt of this information, Dutch Customs went back on board the Sea Brave, which had been docked overnight at a nearby pier. However, it was discovered that someone had apparently already boarded the vessel and removed the television from its wall unit. A hidden compartment behind the television was empty.

After negotiations between the United States Department of Justice and the Dutch Government, it was concluded prosecutions would take place in the United States District Court, District of Puerto Rico and Respondent and his cohorts were indicted on charges of conspiring to import more than one kilogram of heroin, a Schedule I Narcotic Controlled Substance, and more than five kilograms of cocaine, a Schedule II Narcotic Controlled Substance, in violation of 21 U.S.C. 952, 960 and 963. Respondent entered pleas of not guilty and was detained pending trial at the Metropolitan Detention Center in Guaynabo, Puerto Rico. On September 19, 2002, Respondent plead guilty to one felony count of 21 U.S.C. 952(a), Possession With Intent To Import Heroin. On May 16, 2003, he was sentenced to 20 months incarceration and 60 months supervised release.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certification of Registration and deny any pending applications for renewal of such registration, if she determines that continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

It is undisputed that Respondent was convicted of Possession With Intent to Import Heroin. Since Respondent's felony conviction related to controlled substances, grounds exist to revoke his DEA registration under 21 U.S.C. 824(a)(2). *See William C. Potter, D.V.M.*, 65 FR 50,569 (2000).

Next, the Deputy Administrator considers whether Respondent's continued registration would be inconsistent with the public interest. In this case, the Deputy Administrator finds factors three, four and five relevant in determining whether continuing Respondent's registration would be inconsistent with the public interest.

As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, there is no evidence in the investigative file of action being taken against any professional license of Respondent. With respect to factor two, his experience in dispensing, or conducting research with respect to controlled substances, there is no information in the investigative file relative to Respondent's lawful handling of controlled substances in his professional practice.

With regard to factors three, four and five, the Deputy Administrator finds that Respondent, by his own admission, used his vessel to knowingly transport cocaine and heroin and attempted to conceal the drugs in a hidden compartment. He was then arrested and convicted of Possession With Intent to Import Heroin. The egregious nature of Respondent's conduct bears directly upon his fitness to possess a DEA registration and, applying the above factors, leads to the obvious conclusion that Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BG2485173, previously issued to Ivan D. Garcia-Ramirez, be, and it hereby is, revoked. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23714 Filed 10–21–04; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. 04–01]**

## RX Network of South Florida, LLC Revocation of Registration

On October 10, 2003, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to RX Network of South Florida, LLC (Respondent), notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, BR7139238, as a retail pharmacy, and deny any pending applications for renewal or modification of registration pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that Respondent's continued registration would be inconsistent with the public interest. The Order to Show Cause and Immediate Suspension of Registration further informed Respondent of the suspension of its DEA Certificate of Registration, as an imminent danger to the public health or safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Immediate Suspension of Registration alleged in relevant part, that Respondent, owned and operated by Vincent Chhabra, Sabrina Faruqui and Carleta Carolina, dispensed over 19,300,000 various controlled substances through orders of customers who had accessed an Internet Web site set up by Respondent. Customers of Respondent would complete a questionnaire set up on the Web site, which solicited information about the customer, including the type of medication desired. After the customer's credit card was processed, the questionnaire was forwarded to one of several ''staff'' physicians who then issued prescriptions for the controlled substances being ordered. The prescriptions were then sent electronically to Respondent, which then dispensed the controlled substances to customers through the mail. The ''staff'' physicians, as well as Respondent's customers, were located in various states throughout the United States and the physicians had no interaction with customers before prescribing the controlled substances.

The Order to Show Cause and Immediate Suspension of Registration also alleged that on April 21, 2001, DEA issued a policy statement, *Dispensing and Purchasing Controlled Substances over the Internet,* 66 FR 21,181 (2001). The policy statement delineated certain circumstances under the which DEA deems prescribing over the Internet to be unlawful, including, inter alia, the circumstance when a controlled substance is issued or dispensed without a bona fide doctor/patient relationship. The policy further explained that completed questionnaires, later reviewed by a doctor hired by the Internet pharmacy ''could not be considered the basis of a doctor/patient relationship.'' *Id.,* at 21,182–21,183. In further support of DEA policy, the Order to Show Cause and Immediate Suspension of Registration cited the final order revoking the DEA registration of a practitioner who had participated in an Internet pharmacy scheme similar to that of Respondent. *See Rick Joe Nelson, M.D.* 66 FR 30,752 (2001).

The Order to Show Cause and Immediate Suspension of Registration further referenced correspondence during November 2002 and February 2003 between the United States Department of Justice and the then-attorney of Vincent Chhabar. In those letters, Mr. Chhabra's attorney was reminded that his client had been notified of the foregoing DEA policy and requested to shut down its Internet pharmacy operation.

The Order to Show Cause and Immediate Suspension of Registration further referenced an order of emergency suspension issued by the Florida Department of Health (the Department) against Respondent on May 30, 2002, as well as administrative complaints issued by the Department's Pharmacy Board against Respondent and one of its pharmacists. While both actions stemmed from allegations that Respondent operated an Internet pharmacy, the Order to Show Cause and Immediate Suspension of Registration referenced the Pharmacy Board's March 31, 2003, assessment of a $48,000 fine as the only sanction.

The Order to Show Cause and Immediate Suspension of Registration further alleged that on seven separated occasions during September and October 2003, DEA diversion investigators and agents from the United States Food and Drug Administration conducted a series of undercover operations with the objective of obtaining controlled substances from Respondent through its Internet operation. The operation resulted in law enforcement officers receiving quantities of Bontril (a Schedule III controlled substance) and phentermine (a Schedule IV controlled substance) from Respondent after filling out Internet questionnaires with fictitious names and fictitious weights. The law enforcement officers had no contact with the prescribing physicians, who issued prescriptions from locations in Florida, Missouri and Pennsylvania. However, there were no allegations in the Order to Show Cause and Immediate Suspension of Registration addressing the status of Respondent's authorization to handle controlled substances in the State of Florida.

By letter dated November 3, 2003, Respondent, through counsel, requested a hearing in this matter. The request included various arguments challenging the basis for the Order to Show Cause and Immediate Suspension of Registration. On November 10, 2003, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Order for Prehearing Statements.

On November 21, 2003, in lieu of a prehearing statement, counsel for DEA filed Government's Motion for Summary Judgment and Motion to Stay the Filing of Prehearing Statements. In support of its motions, the Government referenced a letter dated November 20, 2003, in which Respondent's counsel had notified the Florida Board of Pharmacy of the following: ''Without the ability to dispense controlled substance[s], a crucial element of operating a pharmacy, [Respondent] can no longer remain viable, and must relinquish its pharmacy permit.'' According to the Government, the letter indicated Respondent no longer had a pharmacy license in the State of Florida and, as a result, further proceedings in the matter were not required. Attached to the Government's motion was the aforementioned letter from Respondent's counsel to the Florida Board of Pharmacy.

In response to the Government's motion, Respondent argued in relevant part, that the Order to Show Cause and Immediate Suspension of Registration had not alleged that it did not have a current state pharmacy license. Respondent further argued that its lack of such a license now rendered these proceedings ''legally moot'' and that the Administrative Law Judge should deny the Government's Motion for Summary Disposition and issue an order dismissing the case as moot.

On December 17, 2003, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner rejected Respondent's contentions concerning the Government's failure to initially allege lack of state authority, holding the relevant question was Respondent's status to handle controlled substances at the time of the Opinion and Recommended Decision, not at what stage of the proceedings that status may have changed. She further noted Respondent had never surrendered its DEA Certificate of Registration and that the surrender of its state pharmacy license did not render this proceeding moot.

Judge Bittner granted the Government's Motion for Summary Disposition, finding Respondent lacked authorization to handle controlled substances in Florida, the jurisdiction in which it is registered with DEA. In granting the Government's motion, Judge Bittner further recommended that Respondent's DEA registration be revoked and any pending applications be denied. According to the letter transmitting this matter to the Deputy Administrator, no exceptions were filed by either party to the Opinion and Recommended Decision.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon the findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommenced Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration RB7139238 and is registered to handle controlled substances in Florida as a retail pharmacy. The Deputy Administrator's review of the November 20, 2003, letter from Respondent's counsel to the Florida Board of Pharmacy reveals that after receiving the order of immediate suspension of its DEA registration, Respondent surrendered its pharmacy permit to the Board of Pharmacy. It appears from this action that Respondent surrendered its authority to handle controlled substances in Florida and, as a result, lacks a necessary prerequisite for DEA registration. There is no evidence before the Deputy Administrator that Respondent's pharmacy permit has been returned or reinstated or that Respondent is currently licensed in Florida as a retail pharmacy. Accordingly, it is reasonable to infer that Respondent is without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Prescriptionline.com,* 69 FR 5583 (2004); *Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Wingfield Drugs, Inc.,* 52 FR 27,070 (1987). The agency has also maintained this standard in matters involving the immediate suspension of a DEA Certificate of Registration under 21 U.S.C. 824(d). *See Chemical Dependence Associates of Houston,* 58 FR 37505 (1993).

Here, Respondent is currently not licensed to handle controlled substances in Florida, the state where it maintains its registration with DEA. Therefore, Respondent is not entitled to maintain that registration. Because Respondent is not entitled to a DEA registration in Florida due to its lack of state authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address whether Respondent's registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause and Immediate Suspension of Registration. *See Deanwood Pharmacy,* 68 FR 41662 (2003); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Greenbelt Professional Pharmacy,* 57 FR 55000 (1992).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BR7139238, issued to RX Network of South Florida, LLC, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23715 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Daniel Ortiz-Vargas, M.D.; Revocation of Registration

On March 2, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Daniel Ortiz-Vargas, M.D. (Respondent) of Yauco, Puerto Rico, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BO6085395, as practitioner, under 21 U.S.C. 824(a)(5) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Respondent had been mandatorily excluded from participating in federal health programs pursuant to 42 U.S.C. 1320–7(a).

By letter dated March 28, 2004, Respondent, through legal counsel, requested a hearing. On April 20, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements, requiring the Government and Respondent to file prehearing statements by May 11 and June 1, 2004, respectively. The Government filed a timely prehearing statement, however, Respondent failed to file his prehearing statement by the deadline.

On June 29, 2004, Judge Randall issued a *sua sponte* Notice and Order to Respondent allowing him a limited extension of time, until July 21, 2004, to file his prehearing statement. The Notice and Order cautioned Respondent that if he failed to meet this deadline, Judge Randall would deem his inactivity to be a waiver of his hearing entitlement and that she would issue an order terminating the case. Respondent did not file a prehearing statement and on August 10, 2004, Judge Randall issued her Order terminating the proceedings. On August 26, 2004, the Office of Chief Counsel forwarded the record to the Deputy Administrator for entry of a final order based on the investigative file.

Therefore, the Deputy Administrator finds that Respondent, having requested a hearing but having failed to participate in the matter after being apprised of the consequences, is deemed to have waived his hearing right. *See Bill Lloyd Drug,* 64 FR 1823–01 (1999); *Vincent A. Piccone, M.D.,* 62 FR 62,074 (1997). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration BO6085395. The Deputy Administrator further finds that as a result of Respondent's fraudulent activities, pursuant to his guilty plea, he was convicted in the United States District Court, District of Puerto Rico of one count of conspiring to solicit and receive kickbacks in relation to Medicare referrals for durable medical equipment, in violation of 18 U.S.C. 371. On September 17, 2002, he was sentenced to three years probation.

As a result of Respondent's conviction, on January 31, 2003, he was notified by the Department of Health and Human Services of his five-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Exclusion from Medicare is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5); *see Johnnie Melvin Turner, M.D.,* 67 FR 71,203 (2002). The underlying conviction forming the basis for registrant's exclusion from participating in Federal health care programs need not involve controlled substances for revocation under 21 U.S.C. 824(a)(5). *See KK Pharmacy,* 64 FR 49,507 (1999); *Stanley Dubin, D.D.S.,* 61 FR 60,727 (1996).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BO6085395, issued to Daniel Ortiz-Vargas, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23710 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Serge V. Verne, D.D.S. Revocation of Registration

On October 30, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Serge V. Verne, D.D.S. (Dr. Verne) at his registered location in San Diego, California, with a second copy sent to a location in Rancho Santa Fe, California. Dr. Verne was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BV2328830, under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. Specifically, the Order to Show Cause alleged that Dr. Verne was without state license to handle controlled substances in the State of California. The Order to Show Cause also notified Dr. Verne that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

As alluded to above, copies of the Order to Show Cause were sent by certified mail to Dr. Verne at two separate locations. According to the investigative file, the copy sent to the San Diego location was returned to DEA unclaimed, however, the second show cause order sent to the Rancho Santa Fe location was accepted on Dr. Verne's behalf on November 19, 2003. DEA has not received a request for hearing or any other reply from Dr. Verne or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Verne is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Verne is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V. According to information in the investigative file, effective May 8, 2003, the Dental Board of California (Dental Board) ordered the revocation of Dr. Verne's license to practice dentistry in that state. The Dental Board's action was based in part upon findings that Dr. Verne provided false and misleading information regarding his continuing education, and his use of fraud in the procurement of his dental license and general anesthesia permit. There is no evidence before the Deputy Administrator to rebut findings that Dr. Verne's California dental license has been revoked and has not been reinstated. Therefore, the Deputy Administrator finds that since Dr. Verne is not currently authorized to practice dentistry in California, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Richard J. Clement, M.D., 68 FR 12,103 (2003); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear that Dr. Verne is not licensed to handle controlled substances in California, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BV2328830, issued to Serge V. Verne, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–23716 Filed 10–21–04; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 1, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 1, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of October 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions Instituted between 09/27/2004 and 10/08/2004]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 55,686 | Electronic Data Systems (EDS) (NPW) | Coraopolis, PA | 09/27/2004 | 09/27/2004 |
| 55,687 | Lace Lastics Co., Inc. (Wkrs) | Oxford, NC | 09/27/2004 | 09/24/2004 |
| 55,688 | California Manufacturing Co. (Comp) | California, MO | 09/27/2004 | 09/22/2004 |
| 55,689 | Alpha Circuit Technology (State) | Rogers, MN | 09/27/2004 | 09/27/2004 |
| 55,690 | Tower Automotive (IUE) | Greenville, MI | 09/27/2004 | 09/24/2004 |
| 55,691 | Royal Home Fashions (Wkrs) | Henderson, NC | 09/27/2004 | 09/24/2004 |
| 55,692 | Falcon Garments (State) | Dallas, TX | 09/27/2004 | 09/21/2004 |
| 55,693 | Acuity Brands Lighting (Comp) | Cochran, GA | 09/27/2004 | 09/20/2004 |
| 55,694 | Donl, Inc. (Cmp) | Clayton, GA | 09/27/2004 | 09/22/2004 |
| 55,695 | Ridgefield Forest Products (Wkrs) | Ridgefield, WA | 09/27/2004 | 09/22/2004 |
| 55,696 | Ametek Aerospace and Power Ind. (IUE) | Wilmington, MA | 09/27/2004 | 09/24/2004 |
| 55,697 | MacDonald Tube Products (UAW) | Madison Hgts., MI | 09/27/2004 | 09/14/2004 |
| 55,698 | Ultra Wheel (State) | Bueno Park, CA | 09/27/2004 | 09/23/2004 |
| 55,699 | Gear Research (Comp) | Grand Rapids, MI | 09/28/2004 | 09/27/2004 |
| 55,700 | Emerson Tool Co. (IBB) | Menomiee, MI | 09/28/2004 | 09/22/2004 |
| 55,701 | Strattec Security Corp. (Comp) | Milwaukee, WI | 09/28/2004 | 09/23/2004 |
| 55,702 | Onsite International (Comp) | El Paso, TX | 09/28/2004 | 09/16/2004 |
| 55,703 | Otsego Tool and Engineering (Wkrs) | Albertville, MN | 09/28/2004 | 09/23/2004 |
| 55,704 | Quantegy, Inc. (Comp) | Opelika, AL | 09/28/2004 | 09/22/2004 |
| 55,705 | Mid-South Waste (Wkrs) | New Albany, MS | 09/29/2004 | 09/14/2004 |
| 55,706 | Seco Warwick (IBEW) | Meadville, PA | 09/29/2004 | 09/13/2004 |
| 55,707 | Iris Apparel, Inc. (Comp) | Clarkrange, TN | 09/29/2004 | 09/20/2004 |
| 55,708 | Alcatel (State) | Plano, TX | 09/29/2004 | 09/28/2004 |
| 55,709 | Facilities Mgt & Maint. Services of Conway (A) | Conway, AR | 09/30/2004 | 09/29/2004 |
| 55,710 | Distinct Marketing Designs (Wkrs) | High Point, NC | 09/30/2004 | 09/27/2004 |
| 55,711 | San Francisco Sewing Association (Wkrs) | Daly City, CA | 09/30/2004 | 09/29/2004 |
| 55,712 | Universal Record Distributing Corp (NPW) | Philadelphia, PA | 09/30/2004 | 09/22/2004 |
| 55,713 | Techform (OR) | Milwaukie, OR | 09/30/2004 | 09/27/2004 |
| 55,714 | Interface Fabrics (Wkrs) | Elkin, NC | 10/01/2004 | 10/01/2004 |
| 55,715 | Merix Corp. (Comp) | Forest Grove, OR | 10/01/2004 | 09/30/2004 |
| 55,716 | Devivo Industries (CT) | Waterbury, CT | 10/01/2004 | 09/30/2004 |
| 55,717 | General Chemical (USWA) | Claymont, DE | 10/01/2004 | 09/14/2004 |
| 55,718 | Halstab (PACE) | Hammond, IN | 10/01/2004 | 09/09/2004 |
| 55,719 | Lanier Clothes, Div. of Oxford Ind. (Comp) | Greenville, GA | 10/04/2004 | 10/01/2004 |
| 55,720 | Boeing Aircraft Co. (The) (IAM) | Wichita, KS | 10/04/2004 | 08/30/2004 |
| 55,721 | NCH Sewing, Inc. (Wkrs) | San Francisco, CA | 10/04/2004 | 09/20/2004 |
| 55,722 | Andrew Corporation (Comp) | Orland Park, IL | 10/04/2004 | 09/17/2004 |
| 55,723 | Rising Tides (State) | Florence, MA | 10/04/2004 | 09/15/2004 |
| 55,724 | Ranbar Electrical Materials, Inc. (Wkrs) | Manor, PA | 10/04/2004 | 09/22/2004 |
| 55,725 | Tupperware U.S., Inc. (Wkrs) | Hemingway, SC | 10/04/2004 | 09/28/2004 |
| 55,726 | United States Can Co. (Wkrs) | Elgin, IL | 10/04/2004 | 09/20/2004 |
| 55,727 | Quality Printing Co., Inc. (Comp) | Neenah, WI | 10/04/2004 | 09/28/2004 |
| 55,728 | Medex, Inc. (Comp) | Dublin, OH | 10/04/2004 | 09/28/2004 |
| 55,729 | Jervis B. Webb Co. (Wkrs) | Mt. Vernon, OH | 10/04/2004 | 09/22/2004 |
| 55,730 | B and J Knits, Inc. (Comp) | Statesville, NC | 10/04/2004 | 09/20/2004 |
| 55,731 | General Chemical—DVW–N (USWA) | Claymont, DE | 10/04/2004 | 09/14/2004 |
| 55,732 | John Crane, Inc. (Comp) | McAllen, TX | 10/04/2004 | 09/08/2004 |
| 55,733 | Maidenform, Inc. (State) | Jacksonville, FL | 10/04/2004 | 09/28/2004 |
| 55,734 | OWT Industries, Inc. (Comp) | Pickens, SC | 10/05/2004 | 10/04/2004 |
| 55,735 | Invista S.A.R.L. (Comp) | Kinston, NC | 10/05/2004 | 10/05/2004 |
| 55,736 | Helmuth Industries (State) | Linden, NJ | 10/05/2004 | 10/05/2004 |
| 55,737 | F.S. Childers and Sons Lumber Co., Inc. (Comp) | Taylorsville, NC | 10/05/2004 | 10/04/2004 |
| 55,738 | Eiser, Inc. (Comp) | Portland, OR | 10/05/2004 | 09/13/2004 |
| 55,739 | Zenith/LG Electronics (Wkrs) | Lincolnshire, IL | 10/05/2004 | 09/13/2004 |
| 55,740 | American Slate and Marble (Comp) | Hickory, NC | 10/05/2004 | 09/28/2004 |
| 55,741 | Smurfit-Stone Container Corp. (ULA) | Milford, CT | 10/05/2004 | 10/05/2004 |
| 55,742 | Rock-Tenn Co. (Wkrs) | Otsego, MI | 10/06/2004 | 09/29/2004 |
| 55,743 | Dawson Furniture Co. (Comp) | Webb City, MO | 10/06/2004 | 10/04/2004 |
| 55,744 | Hendry Telephone Products (Comp) | Goleta, CA | 10/06/2004 | 10/05/2004 |
| 55,745 | Interstate Brand (RWDSU) | Grand Rapids, MI | 10/06/2004 | 09/23/2004 |
| 55,746 | West Point Stevens (Comp) | Clemson, SC | 10/07/2004 | 10/04/2004 |
| 55,747 | Child Craft, Inc. (IBB) | Salem, IN | 10/07/2004 | 09/19/2004 |
| 55,748 | Liz Claiborne (UNITE) | N. Bergen, NJ | 10/07/2004 | 10/05/2004 |
| 55,749 | Troy, LLC (USWA) | Harrisville, WV | 10/07/2004 | 10/01/2004 |
| 55,750 | Pressman Toy (State) | New Brunswick, NJ | 10/07/2004 | 10/06/2004 |
| 55,751 | Seams, Inc. (Comp) | White Mills, PA | 10/07/2004 | 10/06/2004 |
| 55,752 | Grand Traverse Engineering, Inc. (State) | Williamsburg, MI | 10/08/2004 | 09/29/2004 |
| 55,753 | VF Imagewear (Comp) | Sparta, TN | 10/08/2004 | 09/28/2004 |
| 55,754 | Dan River, Inc. (Wkrs) | New York, NY | 10/08/2004 | 09/29/2004 |
| 55,755 | GE Capital IT Solutions (Wkrs) | Erlanger, KY | 10/08/2004 | 09/18/2004 |

APPENDIX—Continued

[Petitions Instituted between 09/27/2004 and 10/08/2004]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 55,756 | Inmed Corp dba Trusch, Inc. (Comp) | Duluth, GA | 10/08/2004 | 10/07/2004 |
| 55,757 | Bernhardt Furniture Co. (Comp) | Lenoir, NC | 10/08/2004 | 09/27/2004 |
| 55,758 | Hooker Furniture Corp. (Comp) | Martinsville, VA | 10/08/2004 | 10/01/2004 |
| 55,759 | Monterey Carpets (State) | Santa Ana, CA | 10/08/2004 | 09/13/2004 |
| 55,760 | C and D Lumber (State) | Riddle, OR | 10/08/2004 | 10/04/2004 |
| 55,761 | Technicon Engineering, Inc. (Comp) | Macon, GA | 10/08/2004 | 09/24/2004 |
| 55,762 | Seton Company (State) | Newark, NJ | 10/08/2004 | 10/07/2004 |
| 55,763 | Contractor's Engineer, LLC (Comp) | Neodesha, KS | 10/08/2004 | 09/10/2004 |
| 55,764 | DeVlieg Bullard, II (Wkrs) | Rockford, IL | 10/08/2004 | 09/18/2004 |
| 55,765 | Ferrania USA, Inc. (Comp) | Weatherford, OK | 10/08/2004 | 10/07/2004 |
| 55,766 | Aerotek/Solectron Tech. (State) | Charlotte, NC | 10/08/2004 | 10/05/2004 |

[FR Doc. 04–23684 Filed 10–21–04; 8:45 am]

BILLING CODE 4510–30–M

## 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. 276(a) 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 supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

#### Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut
- CT030001 (Jun. 13, 2003)
- CT030003 (Jun. 13, 2003)
- CT030004 (Jun. 13, 2003)

Rhode Island
- RI030001 (Jun. 13, 2003)
- RI030002 (Jun. 13, 2003)

*Volume II*

Maryland
- MD030001 (Jun. 13, 2003)
- MD030010 (Jun. 13, 2003)
- MD030021 (Jun. 13, 2003)
- MD030035 (Jun. 13, 2003)
- MD030037 (Jun. 13, 2003)
- MD030040 (Jun. 13, 2003)
- MD030042 (Jun. 13, 2003)
- MD030046 (Jun. 13, 2003)
- MD030058 (Jun. 13, 2003)

Pennsylvania
- PA030004 (Jun. 13, 2003)
- PA030005 (Jun. 13, 2003)
- PA030007 (Jun. 13, 2003)
- PA030008 (Jun. 13, 2003)
- PA030010 (Jun. 13, 2003)
- PA030012 (Jun. 13, 2003)
- PA030013 (Jun. 13, 2003)
- PA030014 (Jun. 13, 2003)
- PA030015 (Jun. 13, 2003)
- PA030016 (Jun. 13, 2003)
- PA030017 (Jun. 13, 2003)
- PA030018 (Jun. 13, 2003)

PA030019 (Jun. 13, 2003)
PA030020 (Jun. 13, 2003)
PA030021 (Jun. 13, 2003)
PA030023 (Jun. 13, 2003)
PA030024 (Jun. 13, 2003)
PA030025 (Jun. 13, 2003)
PA030026 (Jun. 13, 2003)
PA030030 (Jun. 13, 2003)
PA030031 (Jun. 13, 2003)
PA030040 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)
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OH030013 (Jun. 13, 2003)
OH030023 (Jun. 13, 2003)
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OH030026 (Jun. 13, 2003)
OH030028 (Jun. 13, 2003)
OH030029 (Jun. 13, 2003)
OH030032 (Jun. 13, 2003)
OH030033 (Jun. 13, 2003)
OH030034 (Jun. 13, 2003)
OH030035 (Jun. 13, 2003)
OH030036 (Jun. 13, 2003)

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KS030004 (Jun. 13, 2003)
KS030008 (Jun. 13, 2003)
KS030016 (Jun. 13, 2003)
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*Volume VI*

Alaska
AK030001 (Jun. 13, 2003)
Idaho
ID030003 (Jun. 13, 2003)
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ID030019 (Jun. 13, 2003)
Oregon
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WA030002 (Jun. 13, 2003)
WA030004 (Jun. 13, 2003)
WA030005 (Jun. 13, 2003)
WA030006 (Jun. 13, 2003)
WA030007 (Jun. 13, 2003)
WA030011 (Jun. 13, 2003)

*Volume VII*

California
CA030013 (Jun. 13, 2003)
CA030037 (Jun. 13, 2003)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 14th day of October 2004.

**Terry Sullivan,**

*Acting Chief, Branch of Construction Wage Determinations.*

[FR Doc. 04–23410 Filed 10–21–04; 8:45 am]
BILLING CODE 4510–27–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–213]**

## Connecticut Atomic Power Company, Haddam Neck Plant, Exemption From Certain Low-Level Waste Shipment Tracking Requirements in 10 CFR Part 20 Appendix G

### 1.0 Background

The Connecticut Yankee Atomic Power Company (CYAPCO) is the licensee and holder of Facility Operating License No. DPR–61 issued for Haddam Neck Plant (HNP), located in East Hampton, Connecticut. The HNP is a permanently shutdown nuclear reactor facility. Beginning in 2003, the amount of radioactive waste shipped from the site significantly increased. The majority of the radioactive waste generated by the site is related to HNP decommissioning activities. Inherent to the decommissioning process, large volumes of slightly contaminated concrete rubble and debris are generated that require shipment for disposal in offsite low-level radioactive waste burial sites. Due primarily to the volume of radioactive waste, CYAPCO has encountered an increase in the number of routine shipments that take longer than 20 days from transfer to the shipper to receipt acknowledgment from the burial site. Each shipment with receipt notifications greater than 20 days requires a special investigation and report to the Nuclear Regulatory Commission (NRC) which the licensee believes to be burdensome and unnecessary to meet the intent of the regulation.

### 2.0 Request/Action

In a letter to the Commission dated June 1, 2004, CYAPCO requested an exemption from the requirements in 10 CFR part 20, Appendix G, Section III.E, to investigate and file a report to the NRC if shipments of low-level radioactive waste are not acknowledged by the intended recipient within 20 days after transfer to the shipper. This exemption would extend the time period that can elapse during shipments of low-level radioactive waste before CYAPCO is required to investigate and file a report to the NRC from 20 days to

35 days. The exemption would be limited to truck, combination truck/rail shipping and potential future combination barge/rail shipping methods. The exemption request is based on a statistical analysis of the historical data of low-level radioactive waste shipment times from the licensee's site to the disposal site.

**3.0 Discussion**

The proposed action would grant an exemption to extend the 20-day investigation and reporting requirements for shipments of low-level radioactive waste to 35 days. Beginning in 2003, CYAPCO has made over 40 shipments of low-level radioactive waste as part of the decommissioning efforts at the facility. MHF Logistical Solutions is the rail broker company used by CYAPCO to perform these shipments. MHF Logistical Solutions has a tracking system that monitors the progress of the shipments from their originating point at HNP to their final destination at Envirocare of Utah, Inc. The shipments are made by either truck or combination truck/rail and, according to CYAPCO, the transportation time alone takes over 21 days on average, with one shipment taking 25 days.

In addition, administrative procedures at Envirocare and mail delivery can add up to 4 additional days. Based on historical data and estimates of the remaining waste at HNP, CYAPCO could have to perform over 400 investigations and reports to the NRC during the next 3 years if the 20-day notification criteria is maintained. The licensee affirms that the low-level radioactive waste shipments will always be tracked throughout transportation until they arrive at their intended destination. CYAPCO believes that the need to investigate, trace, and report to the NRC on the shipment of low-level radioactive waste packages not reaching their destination within 20 days does not serve the underlying purpose of the rule and is not necessary. As a result, CYAPCO states that granting this exemption will not result in an undue hazard to life or property.

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of regulations in 10 CFR part 20 if it determines the exemption is authorized by law and would not result in undue hazard to life or property. There are no provisions in the Atomic Energy Act (or in any other Federal statute) that impose a requirement to investigate and report on low-level radioactive waste shipments that have not been acknowledged by the recipient within 20 days of transfer. Therefore, the Commission concludes that there is no statutory prohibition on the issuance of the requested exemption and the Commission is authorized to grant the exemption by law.

The Commission acknowledges that based on the statistical analysis of low-level radioactive waste shipments from the HNP site, the need to investigate and report on shipments that take longer than 20 days could result in an excessive administrative burden on the licensee. The Commission asserts that the underlying purpose of the rule is to investigate a late shipment that may be lost, misdirected, or diverted. Because of the oversight and monitoring of radioactive waste shipments throughout the entire journey from HNP to the disposal site, it is unlikely that a shipment could be lost, misdirected, or diverted without the knowledge of the carrier or CYAPCO. Furthermore, by extending the elapsed time for receipt acknowledgment to 35 days before requiring investigations and reporting, a reasonable upper limit on shipment duration (based on historical analysis) is still maintained if a breakdown of normal tracking systems were to occur. Consequently, the Commission finds that there is no hazard to life or property by extending the investigation and reporting time for low-level radioactive waste shipments from 20 days to 35 days for truck, combination truck/rail, or potential future combination barge/rail shipments. Therefore, the Commission concludes that the underlying purpose of 10 CFR part 20, Appendix G, Section III.E will be met.

**4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption requested by CYAPCO in its January 26, 2004, letter is authorized by law and will not result in undue hazards to life or property. Therefore, the Commission hereby grants CYAPCO an exemption to extend the 20-day investigation and reporting requirements for shipments of low-level radioactive waste, as required by 10 CFR part 20, Appendix G, Section III.E, to 35 days.

Pursuant to 10 CFR 51.31, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as documented in **Federal Register** notice 69 FR 59971 (October 6, 2004).

This exemption is effective upon issuance.

Dated in Rockville, Maryland this 14th day of October, 2004.

For the Nuclear Regulatory Commission.

**Daniel M. Gillen,**

*Deputy Director, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04–23665 Filed 10–21–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 3, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

*Wednesday, November 3, 2004—11:45 a.m.—1 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 18, 2004.

**John H. Flack,**

*Acting Branch Chief, ACRS/ACNW.*

[FR Doc. 04–23663 Filed 10–21–04; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 94–7

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 94–7, Death Benefit Payment Rollover Election for the Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Approximately 2,000 RI 94–7 forms will be completed annually. The form takes approximately 60 minutes to complete. The annual burden is 2,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3540

and

Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management

**Kay Coles James,**

*Director.*

[FR Doc. 04–23693 Filed 10–21–04; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Standard Form 2808

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2808, Designation of Beneficiary: Civil Service Retirement System (CSRS), is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Approximately 2,000 forms will be completed annually. The form takes approximately 15 minutes to complete. The annual burden is estimated at 500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Pamela S. Israel, Chief Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and Joseph F. Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–23694 Filed 10–21–04; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request; Review of a Revised Information Collection: OPM Form of 612, Optional Application for Federal Employment Resume Builder in USAJOBS Web Site and the USAJOBS Web Site

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a revised information collection of the optional form called *Optional Application for Federal Employment (OF 612)*; the specifications of the improved resume builder in the USAJOBS Web site (*http://www.USAJOBS.opm.gov*); and screen shots of the Web pages within the USAJOBS Web site.

The *OF 612* is a data collection form used to collect applicant qualifications information associated with vacancy announcements. The form provides necessary guidance to applicants so that they can be considered for employment when applying for Federal jobs. Presently the *OF 612* is downloadable from OPM's electronic forms page on the USAJOBS Web site (*http://www.opm.gov/forms*) in fillable .pdf format. This data collected are necessary for Federal agencies to evaluate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 United States Code.

OPM proposes to eliminate the optional form *Applying for a Federal Job (OF 510).* The *OF 510* is a brochure that has been used to provide guidance to the general public on how to apply for Federal jobs and to construct a Federal resume. This brochure provides instructions on what necessary work, education, and other information applicants should provide when completing a resume or other application for Federal employment consideration. The instructions contained in the *OF 510* have been incorporated into the revised *OF 612* and the USAJOBS resume builder. The instructions are also available through numerous other sources, including the USAJOBS Web site, that were not available at the time this brochure was originally created. This action is being taken to eliminate the need to print,

maintain, and distribute an instructional guide in hard copy format where the information can be readily updated and delivered leveraging current Web and other automated technology.

OPM intends to reconstruct the resume builder in the USAJOBS Web site to be in line with the data elements collected in the revised *OF 612.* The resume builder will contain the critical elements applied across the Federal government to assess an applicant's qualifications. Thus, the new design will capture only the essential information Federal agencies use to evaluate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 United States Code.

The *Optional Application for Federal Employment (OF 612)* and the resume builder in the USAJOBS Web site contain questions regarding the applicant's education history, including dates of attendance, name, type and place of institution, and degrees earned. Due to the increasing number of claimed degrees earned from non-accredited or bogus institutions, commonly referred to as diploma mills, the revised versions include an accreditation field. This field asks the applicant to show whether the college or university is accredited by, or is in pre-accreditation status of, an accrediting organization recognized by the U.S. Department of Education at the time the applicant attended the institution. The revised forms also advise the applicant not to list education from diploma mills, degrees based solely on life experiences, or obtained from schools with little or no academic standards.

The USAJOBS Web site is the Federal Government's official one-stop source for Federal jobs and employment information. USAJOBS is operated by OPM and provides job vacancy information, employment fact sheets, and job applications/forms and on-line resume development. Job seekers may create a ''My USAJOBS'' account where they can create up to five resumes, or convert and store an existing one. These resumes are stored in one location where they can be updated, saved, or sent at any time.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can further minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 245,000 applications will be completed annually using the *OF 612.* The public reporting burden for the collection of the data will vary from 20 to 240 minutes, with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the information. The annual estimated burden is 9,800 hours.

We estimate 3,510,600 applications will be completed annually using the resume builder in the USAJOBS Web site. The public reporting burden for the collection of the data will vary from 20 to 240 minutes, with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the information. The annual estimated burden is 9,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—U.S. Office of Personnel Management, USAJOBS, ATTN: Mariana Pardo, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2469, Washington, DC 20415.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–23696 Filed 10–21–04; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

**FOR FURTHER INFORMATION CONTACT:** Mr. Art Walker, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, (202) 606–1506.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under a Schedule B authority that was approved in August 3, 2004, and Schedule C's between September 1, 2004, and September 30, 2004. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

**Schedule A**

No Schedule A appointments were approved for September 2004.

**Schedule B**

*U.S. Department of Agriculture 213.3213(b)(1)*

Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established in support the Research Associateship Program and are filled by person having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extension beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service. Effective August 3, 2004.

**Schedule C**

The following Schedule C appointments were approved for September 2004:

*Section 213.3303 Executive Office of the President*

Office of National Drug Control Policy

QQGS60010 Public Affairs Specialist to the Associate Director, Public Affairs. Effective September 2, 2004.

QQGS60009 Legal Analyst to the General Counsel. Effective September 14, 2004.

QQGS00028 White House Liaison and Intergovernmental Affairs Specialist to the Chief of Staff. Effective September 20, 2004.

*Section 213.3304 Department of State*

DSGS60790 Special Assistant to the Assistant Secretary for Economical

Business Affairs. Effective September 7, 2004.

DSGS60792 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective September 7, 2004.

DSGS60793 Chief, Voluntary Visitors Division to the Assistant Secretary for Education and Cultural Affairs. Effective September 7, 2004.

DSGS60794 Special Assistant to the Assistant Secretary for Public Affairs. Effective September 7, 2004.

DSGS60786 Senior Advisor to the Coordinator. Effective September 7, 2004.

DSGS60795 Member, Policy Planning Staff to the Director, Policy Planning Staff. Effective September 7, 2004.

DSGS60789 Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs. Effective September 14, 2004.

DSGS60785 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs. Effective September 17, 2004.

DSGS60796 Program Analyst to the Assistant Secretary for Education and Cultural Affairs. Effective September 28, 2004.

*Section 213.3305 Department of the Treasury*

DYGS00444 Special Assistant to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development). Effective September 14, 2004.

DYGS00445 Senior Advisor to the Secretary (Scheduling) to the Chief of Staff. Effective September 23, 2004.

*Section 213.3306 Department of Defense*

DDGS16834 Staff Assistant to the Principal Deputy Under Secretary of Defense for Policy. Effective September 17, 2004.

DDGS16839 Supervisory Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Internal Communications). Effective September 23, 2004.

DDGS16838 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective September 24, 2004.

DDGS16836 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective September 29, 2004.

*Section 213.3307 Department of the Army*

DWGS60051 Special Assistant to the Assistant Secretary of the Army (Research, Development and Acquisition). Effective September 10, 2004.

DWGS00083 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Acquisition, Logistics and Technology) and Director for Iraq Reconstruction and Program Management. Effective September 29, 2004.

*Section 213.3308 Department of the Navy*

DNGS00064 Confidential Assistant to the Assistant Secretary of Navy (Installations and Environment). Effective September 17, 2004.

*Section 213.3310 Department of Justice*

DJGS00237 Press Assistant to the Director, Office of Public Affairs. Effective September 24, 2004.

*Section 213.3311 Department of Homeland Security*

DMGS00264 Executive Assistant to the Chief of Staff. Effective September 7, 2004.

DMGS00269 Special Assistant to the Under Secretary for Science and Technology. Effective September 07, 2004.

DMGS00259 Counter Narcotics Liaison to the Counter Narcotics Officer. Effective September 08, 2004.

*Section 213.3314 Department of Commerce*

DCGS00676 Senior Advisor to the Assistant Secretary for Manufacturing and Services. Effective September 24, 2004.

DCGS00651 Public Affairs Specialist to the Director of Public Affairs. Effective September 29, 2004.

*Section 213.3315 Department of Labor*

DLGS60126 Special Assistant to the Deputy Assistant Secretary for Labor Management Programs. Effective September 23, 2004.

*Section 213.3316 Department of Health and Human Services*

DHGS60527 Confidential Assistant (Scheduling) to the Director of Scheduling. Effective September 23, 2004.

*Section 213.3317 Department of Education*

DBGS00360 Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services. Effective September 21, 2004.

DBGS00359 Confidential Assistant to the Deputy Assistant Secretary for Enforcement. Effective September 22, 2004.

DBGS00358 Special Assistant to the Deputy Assistant Secretary for Enforcement. Effective September 28, 2004.

DBGS00362 Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services. Effective September 30, 2004.

*Section 213.3318 Environmental Protection Agency*

EPGS04022 Senior Advisor to the Deputy Assistant Administrator for Water. Effective September 14, 2004.

EPGS60018 Great Lakes Special Assistant to the Administrator. Effective September 23, 2004.

*Section 213.3325 United States Tax Court*

JCGS60078 Trial Clerk to the Chief Judge. Effective September 20, 2004.

*Section 213.3327 Department of Veterans Affairs*

DVGS60032 Director, Center for Faith Based Community Initiatives to the Assistant Secretary for Public and Intergovernmental Affairs. Effective September 14, 2004.

*Section 213.3331 Department of Energy*

DEGS00430 Confidential Assistant to the Deputy Administrator for Defense Nuclear Nonproliferation. Effective September 16, 2004.

DEGS00427 Policy Advisor to the Assistant Secretary for Environment, Safety and Health. Effective September 28, 2004.

*Section 213.3355 Social Security Administration*

SZGS00013 Special Assistant to the Commissioner (Advance and Liaison) to the Commissioner. Effective September 23, 2004.

*Section 213.3384 Department of Housing and Urban Development*

DUGS00170 Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective September 23, 2004.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–23695 Filed 10–21–04; 8:45 am]

**BILLING CODE 6325–38–M**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–32318]**

## Issuer Delisting; Notice of Application of Devon Energy Corporation To Withdraw Its Common Stock, $.10 Par Value, From Listing and Registration on the American Stock Exchange LLC

October 18, 2004.

On October 8, 2004, Devon Energy Corporation, a Delaware corporation (''Issuer'') filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.10 par value, (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on September 27, 2004 to withdraw the Issuer's Security from listing on the Amex and to list on the New York Stock Exchange, Inc. (''NYSE''). The Board states that following reasons factored into its decision to withdraw the Issuer's Security from the Exchange: (i) To avoid the direct and indirect costs of, and the division of the market resulting from, dual listing on the Amex and the NYSE; and (ii) it was in the best interest of the Issuer to withdraw its Security from the Amex and list on the NYSE. The Issuer states that the Security ceased trading on the Amex at the close of business on October 11, 2004 and commence trading on the NYSE on October 12, 2004.

The Issuer stated in its application that it has complied with all the applicable laws in effect in Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before November 12, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

*Electronic Comments:*

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–32318 or;

*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 1–32318. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E4–2798 Filed 10–21–04; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50545; File No. SR-NASD-2004–114]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change, as Amended, Relating to Fees for Depth of Book Data in Exchange-Listed Securities in the Nasdaq Market Center

October 14, 2004.

On July 26, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a monthly per-controlled device fee for depth of book information for exchange-listed securities in the Nasdaq Market Center. On August 24, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 9, 2004.[4] The Commission received no comment letters on the proposal, as amended. On October 6, 2004,[5] Nasdaq submitted Amendment No. 2 to the proposed rule change. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[6] In particular, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act,[7] which requires, among other things, that the rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which an association operates or controls.

Specifically, the Commission believes that Nasdaq's dissemination of multiple levels of firm quotes/orders in exchange-listed securities should increase the market information available to market participants. The Commission believes the proposed fee is reasonable in that Nasdaq represents that the $6 monthly fee is based on anticipated message traffic through its new data feed, OpenView, in relation to the message traffic amounts and prices

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

[2] 17 CFR 240.19b–4.

[3] Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 23, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 50304 (September 1, 2004), 69 FR 54714.

[5] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 6, 2004 (''Amendment No. 2''). Amendment No. 2 made a minor technical change to the proposed rule text, as such, it is not subject to notice and comment.

[6] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(5).

for similar data services currently in operation on Nasdaq.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act[8] the proposed rule change (SR–NASD–2004–114), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4–2800 Filed 10–21–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50538; File No. SR–PCX–2004–89]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., To Allow Market Maker Quotation Spreads in PCX Plus of up to $5

October 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 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 and II below, which Items have been prepared by the Exchange. 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 PCX is proposing to amend PCX Rule 6.37 to allow quotation spreads for options that trade on the Exchange's electronic trading platform, PCX Plus, to be $5 regardless of the price of the bid. The text of the proposed rule change appears below. Additions are underlined.

* * * * *

**Rule 6**

**Options Trading**

**Obligations of Market Makers**

RULE 6.37. (a)–No Change.

(b) No Change.

(1) Bidding and/or offering so as to create differences of no more than:

(A) .25 between the bid and the offer for each option contract for which the bid is less than $2,

(B) no more than .40 where the bid is $2 or more but does not exceed $5,

(C) no more than .50 where the bid is more than $5 but does not exceed $10,

(D) no more than .80 where the bid is more than $10 but does not exceed $20, and

(E) no more than $1 when the last bid is $20.10 or more, provided that the Exchange may establish differences other than the above for one or more series or classes of options.

(F) The two Trading Officials or the Exchange may, with respect to options trading with a bid price less than $2, establish bid-ask differentials that are no more than $0.50 wide (''double-width'') when the primary market for the underlying security: (a) Reports a trade outside of its disseminated quote (including any Liquidity Quote); or (b) disseminates an inverted quote. The imposition of double-width relief must automatically terminate when the condition that necessitated the double-width relief (*i.e.,* condition (a) or (b)) is no longer present. Market makers that have not automated this process may not avail themselves of the relief provided herein (*i.e.*, they may not manually adjust prices).

*(G) Options, designated by the Exchange, that trade on PCX Plus may be quoted electronically with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. The $5 quote width shall only apply to classes trading on PCX Plus and only following the opening rotation in each security (i.e., the widths specified in paragraph (b)(1)(A)–(F) above shall apply during opening rotation). Quotes given in open outcry in PCX Plus issues may not be quoted with $5 widths and instead must comply with the legal width requirements specified in paragraph (b)(1)(A)–(F) above.*

(2)–(5)—No Change.

(c)–(h)—No Change.

Commentary .01–.09—No Change.[3]

* * * * *

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*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 substantially relax the quotation spread requirements on options designated by the Exchange that trade on the Exchange's electronic trading platform, PCX Plus. Currently, the PCX's rules contain maximum quotation spread requirements that vary from $.25 to $1, depending on the price of the option. Each PCX market maker independently is subject to these requirements. According to the PCX, while the primary purpose of the spread requirements is to help maintain narrow spreads, the spread requirements also result in individual market makers sometimes quoting at prices that they believe are unnecessarily narrow, potentially exposing them to greater risk if markets move quickly. The PCX believes that, due to the market making system in PCX Plus, the quotation spread requirements may not be necessary to ensure tight and competitive quotations on the PCX.

In this regard, the PCX states that the market structure in PCX Plus creates strong incentives for competing market makers and other market participants to disseminate competitive prices. In PCX Plus, each market maker quotes independently and customers and professional traders can enter limit orders on the PCX's book. The PCX automatically collects this trading interest, calculates the PCX best bid and offer (''BBO''), and disseminates the BBO to the investing public. Furthermore, the PCX allocates trading interest on PCX Plus based upon the price and size of the interest. Under the PCX's trading algorithm, the PCX allocates volume to trading interest at the best price. The larger the size of a person's quote or order at the best price, the more trading interest that person

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] In a telephone call, the PCX agreed to a minor change clarifying that the Exchange is not proposing to amend Commentaries .01 through .09 of PCX Rule 6.37. Telephone conversation between Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, and Yvonne Fraticelli, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on October 13, 2004.

receives. The PCX believes that this provides strong incentives for market makers and other market participants to enter quotes and orders that improve the price and depth of the market. The PCX believes that in this model, market forces provide sufficient discipline to maintain narrow and competitive quotation spreads.

Accordingly, the PCX proposes to expand the allowable spreads for options designated by the Exchange that trade on the Exchange's electronic trading platform, PCX Plus. The $5 quote width shall only apply to options trading on PCX Plus and only following the opening rotation in each security.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, because 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*

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**

The proposed rule change has been designated by the PCX as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] Consequently, because the foregoing rule change: (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 on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] 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, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6) because the PCX's proposal provides quote width relief similar to that provided under the rules of other exchanges.[10] Accordingly, the PCX believes that its proposal does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. In addition, the PCX believes that its request is consistent with the protection of investors and the public interest and that good cause exists, including the PCX's need to maintain competition and efficiency.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] Specifically, the Commission believes that allowing the PCX to implement $5 quotation spread parameters like those adopted by the ISE and the CBOE will help the PCX to compete with those exchanges.[12] The Commission believes that the PCX's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the ISE and CBOE proposals. For these reasons, the Commission designates that the proposal become operative immediately.

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.

**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–2004–89 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–2004–89. 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 this 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] The proposed rule change is based on International Securities Exchange, Inc. (''ISE'') Rule 803(b)(4) and Chicago Board Options Exchange, Inc. (''CBOE'') Rule 8.7(b)(iv)(A). *See* Securities Exchange Act Release Nos. 50015 (July 14, 2004), 69 FR 43872 (July 22, 2004) (order approving File No. SR–ISE–2003–22); and 50079 (July 26, 2004), 29 FR 45858 (July 30, 2004) (order approving File No. SR–CBOE–2004–44).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* note 9, *supra.*

available publicly. All submissions should refer to File Number SR–PCX–2004–89 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–2793 Filed 10–21–04; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50549; File No. SR–PCX–2004– 87]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Trades Resulting From Obvious Error

October 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the PCX as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

PCX proposes to amend its rules pertaining to trade nullification and price adjustment procedures. Additions are italicized. Deletions are bracketed.

* * * * *

Rule 6.87 (g) Trade Nullification and Price Adjustment Procedures

*The Exchange shall either bust a transaction or adjust the execution price of a transaction that results from an Obvious Error as provided in this Rule.*

*(1) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:*

***Theoretical Price Minimum Amount***

*Below $2: .25*
*$2 to $5: .40*
*Above $5 to $10: .50*
*Above $10 to $20: .80*
*Above $20: 1.00*

*(2) Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an option is:*

*(A) if the series is traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option; or*

*(B) if there are not quotes for comparison purposes, as determined by designated personnel of the Exchange.*

*(3) Obvious Error Procedure. The Exchange shall administer the application of this Rule as follows.*

*(A) Notification. If a Market Maker on the Exchange believes that it participated in a transaction that was the result of an Obvious Error, it must notify the Exchange within five (5) minutes of the execution. If an OTP Holder or OTP Firm not serving as a Market Maker on the Exchange believes that an order it executed on the Exchange was the result of an Obvious Error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, the Exchange will not grant relief under this Rule unless notification is made within the prescribed time periods.*

*(B) Adjust or Bust. The Exchange will determine whether there was an Obvious Error as defined above. If it is determined that an Obvious Error has occurred, the Exchange shall take one of the following actions listed below. Upon taking final action, the Exchange shall promptly notify both parties to the trade.*

*(i) Where each party to the transaction is a Market Maker on the Exchange, the execution price of the transaction will be adjusted by the Exchange to the prices provided in paragraphs (aa) and (bb) below unless both parties agree to adjust the transaction to a different price or agree to bust the trade within ten (10) minutes of being notified by the Exchange of the Obvious Error.*

*(aa) Erroneous buy transactions will be adjusted to their Theoretical Price: plus $.15 if the Theoretical Price is under $3 and plus $.30 if the Theoretical Price is at or above $3.*

*(bb) Erroneous sell transactions will be adjusted to their Theoretical Price: minus $.15 if the Theoretical Price is under $3 and minus $.30 if the Theoretical Price is at or above $3.*

*(ii) Where at least one party to the Obvious Error is not a Market Maker on the Exchange, the trade will be busted by the Exchange unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by the Exchange of the Obvious Error.*[5]

[(1) Mutual Agreement: The determination as to whether an Auto-Ex trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an Obvious Error as provided in this Rule.

(2) Obvious Error Subject to Trade Nullification or Price Adjustment: Absent mutual agreement as provided in Rule 6.87(g)(1), parties to a trade may have a trade nullified or its price adjusted if: (i) any such party makes a documented request within the time specified in Rule 6.87(g)(3); and (ii) one of the conditions below is met:

A. The trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.,* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or

B. The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the OTP Holder is responsible where there is Exchange documentation providing that the OTP Holder sought to update or cancel the quote/order; or

C. The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying

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[13] 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] With the Exchange's consent, the Commission has made technical corrections to the text of the proposed rule change. Telephone conversation between Mai Shiver, Director and Senior Counsel, PCX, and Susie Cho, Special Counsel, and Frank Genco, Special Counsel, Division of Market Regulation (''Division''), Commission, on October 14, 2004.

market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question); or

D. The trade resulted from an erroneous quote in the Primary Market (as defined in Rule 6.1(b)(27)) for the underlying security that has a width of at least $1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For the purposes of this rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question); or

E. The execution price of the trade is higher or lower than the mid-point of the Best Bid and Offer (among all of the exchanges other than the PCX) by an amount equal to at least the bid/ask spread provided in Rule 6.37(b)(1). The bid/ask spread set forth in Rule 6.37(b)(1) will also apply to LEAPS and options subject to unusual market conditions. In the event the bid/ask spread in the underlying is greater than the bid/ask spread set forth in Rule 6.37(b)(1), the Exchange will apply the bid/ask spread differential set forth in Rule 6.37(b)(3).

F. The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.

G. The trade is automatically executed at a price where the OTP Holder sells $0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the Primary Market at the time of the transaction minus the strike price for the call. Parity for puts is measured by reference to the strike price for the put minus the bid price of the underlying security in the Primary Market at the time of the transaction.

(3) Obvious Error Procedure. Two Trading Officials will administer the application of this Rule as follows:

A. Notification. If an OTP Holder believes that it participated in a transaction that was the result of an Obvious Error, it must notify two Trading Officials within five (5) minutes of the execution. If an Order Entry Firm representing a public customer believes an order it executed on the Exchange was the result of an Obvious Error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, two Trading Officials will not grant relief under this Rule unless notification is made within the prescribed time periods.

B. Adjust or Nullify. Two Trading Officials will determine whether the execution is subject to a trade nullification or price adjustment. If two Trading Officials determine that one of the conditions of Rule 6.87(g)(2) has been met and that the complaining party has timely documented a request for relief, then a trade will be adjusted or nullified as follows:

(1) Where each party to the transaction is a Market Maker on the Exchange, or the trade involves a limit order that may be adjusted to its limit, the Exchange will adjust the execution price of the transaction within ten (10) minutes of two Trading Officials making such determination. In such case, the adjusted price will be the last bid (offer) price, just prior to the trade, from the exchange providing the highest total contract volume in the option for the previous sixty (60) days with respect to an erroneous bid (offer) entered on the Exchange. If there is no quote for comparison purposes, then the adjusted price of an option will be determined by two Trading Officials; or

(2) Where at least one party to the transaction is not a Market Maker on the Exchange or where the trade does not involve a limit order that may be adjusted to its limit, the Exchange will nullify the transaction within ten (10) minutes of two Trading Officials making such determination.

(3) Upon taking final action, the two Trading Officials will promptly notify both parties to the trade.]

**Commentary:**

[.01 In no case will the two Trading Officials involved in an obvious error determination include a person related to a party to the trade in question.]

.01 [02] All determinations made by the [two Trading Officials] Exchange under subsection [(g)(2)] (g)(3) will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration.

*.02* [.03] Nothing in this rule prevents a potentially aggrieved party from appealing the decision of [two Trading Officials] *the Exchange* pursuant to Rule [11] *10.14* of the Exchange rules.

*.03 When the Exchange determines that an Obvious Error has occurred and action is warranted under Rule 6.87(g)(3)(B) above, the identity of the parties to the trade will be disclosed to each other in order to encourage conflict resolution.*[6]

*.04 Buyers of options with a zero bid and $.05 offer (i.e., a Theoretical Price of $.05) may request that their execution be busted if at least the two strikes below (for calls) or above (for puts) in the same options class were quoted with a zero bid and $.05 offer at the time of the execution. Such buyers must follow the procedures of Rule 6.87(g)(3) above.*

*.05 For purposes of Rule 6.87 (g)(2)(A), the competing options exchange with the most liquidity will be the options exchange that had the highest total contract volume in the options class for the previous two months (e.g., if an obvious error occurs on March 9, the total contract volume from January 8 to March 9 will be used).*

*.06 For purposes of Rule 6.87(g)(3)(B), an "erroneous sell transaction" is one in which the price received by the person selling the option is erroneously low, and an "erroneous buy transaction" is one in which the price paid by the person purchasing the option is erroneously high.*

* * * * *

Rule 10.14(a). General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Exchange to apply for an opportunity to be heard and to have the action reviewed. These actions are:

(1)–(4)—No change.

(5) actions taken pursuant to Rules 6.37, 6.82(f), [and] 6.82(g), *and 6.87;* or

(6)—No change.

* * * * *

**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

[6] With the Exchange's consent, the Commission has made technical corrections to the text of the proposed rule change. Telephone conversation between Mai Sharif Shiver, Director/Senior Counsel, PCX, and Susie Cho, Special Counsel, Division, Commission, on October 12, 2004.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

In 2003, the Commission approved a proposal by the Exchange to adopt PCX Rule 6.87(g), which delineated (1) the circumstances under which an error would be subject to a trade adjustment or nullification, and (2) the procedures that the Exchange would follow in order to effect such adjustments and nullifications.[7] Because OTP Holders and OTP Firms operating on the Exchange also serve as members of other national options exchanges, and because other options exchanges have moved towards rule simplification in order to eliminate uncertainty in the event of an error, the Exchange believes it would be advantageous to adopt a simplified procedure whereby OTP Holders and OTP Firms would have the ability to rely on a uniform standard for evaluating their response to a transaction that qualifies as an obvious error. The Exchange has consulted with its OTP Holders and OTP Firms and determined that the structure adopted by the International Stock Exchange, Inc. (''ISE'') pursuant to ISE Rule 720 for obvious error resolution provides a sound, simplified procedure. As a result, the Exchange seeks to amend its Rule 6.87(g) to make it substantially identical to ISE's provisions.

Currently, Exchange Rule 6.87(g) provides that, absent mutual agreement, parties to a trade may have a trade nullified or its price adjusted if: (1) The trade resulted from a verifiable disruption or malfunction of an Exchange system that caused trades in excess of the disseminated size; (2) the trade resulted from a verifiable disruption or malfunction of an Exchange system that prevented an OTP Holder or OTP Firm from updating or canceling a quote/order for which the OTP Holder or OTP Firm is responsible; (3) the trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market; (4) the trade resulted from an erroneous quote in the Primary Market for the underlying security (under specified conditions); (5) the execution price of the trade is higher or lower than the mid-point of the best bid and offer by an amount equal to at least the bid/ask spread; (6) the trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution; or (7) the trade is automatically executed at a price where the market maker sells $0.10 or more below parity.

As proposed, the amended PCX Rule 6.87(g) would provide that the Exchange[8] shall either bust a transaction or adjust the execution price of a transaction only when the execution price of a transaction is higher or lower than a theoretical price for the series by an amount equal to at least the amount shown below:

| Theoretical price | Minimum amount |
|---|---|
| Below $2 | .25 |
| $2 to $5 | .40 |
| Above $5 to $10 | .50 |
| Above $10 to $20 | .80 |
| Above $20 | 1.00 |

For purposes of PCX Rule 6.87(g), the theoretical price of an option would be the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option (''Theoretical Price''). If there are no quotes for comparison purposes, the Theoretical Price would be determined by designated personnel of the Exchange.

The Exchange also proposes to modify the procedure it uses to adjust or nullify an execution that occurred as a result of an obvious error. The Exchange proposes that the administration and application of the obvious error procedure be handled by the Exchange itself, rather than by two trading officials. The Exchange also seeks to modify its adjust or nullify rules to eliminate most of the nuances between PCX Rule 6.87(g) and ISE Rule 720.

Specifically, the Exchange's current rules provide that the execution price of a trade would be adjusted if the transaction is between market makers or if it involves a limit order that may be adjusted to its limit. In such case, the trade would be adjusted to the last bid or offer from the exchange providing the highest total contract volume in the option for the previous 60 days with respect to the erroneous bid or offer entered on the Exchange. The Exchange's current rules also provide that where a party to a transaction is not a market maker on the Exchange or where the trade involves a limit order that may be adjusted to its limit, the Exchange would nullify the transaction.

The Exchange proposes to adopt the following procedure instead:

*Notification:* If a market maker on the Exchange believes that it participated in a transaction that was the result of an obvious error, it must notify the Exchange within five (5) minutes of the execution. If an OTP Holder or OTP Firm not serving as a market maker on the Exchange believes that an order it executed on the Exchange was the result of an obvious error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, the Exchange would not grant relief under this rule unless notification is made within the prescribed time periods.

*Adjust or Bust:* If it is determined that an obvious error has occurred, the Exchange would take one of the following actions listed below. Upon taking final action, the Exchange would promptly notify both parties to the trade. Where each party to the transaction is a market maker on the Exchange, the execution price of the transaction would be adjusted by the Exchange unless both parties agree to bust the trade within ten (10) minutes of being notified by the Exchange of the obvious error. Erroneous buy transactions would be adjusted to their Theoretical Price plus $.15 if the Theoretical price is under $3, or plus $.30 if the Theoretical Price is at or above $3. Erroneous sell transactions would be adjusted to their Theoretical Price minus $.15 if the Theoretical Price is under $3, or minus $.30 if the Theoretical Price is at or above $3. Where at least one party to the obvious error is not a market maker on the Exchange, the trade would be busted by the Exchange unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by the Exchange of the obvious error.

The Exchange further seeks to renumber its Commentary provisions to

[7] *See* Securities Exchange Act Release No. 48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (approving File No. PCX–2002–01).

[8] The Exchange represents that, for purposes of PCX Rule 6.87(g) and its associated Commentaries, references to the Exchange and Exchange personnel shall mean senior operations personnel in the Exchange's Department of Options Operations. Telephone conversation between Mai Sharif Shiver, Director/Senior Counsel, PCX, and Susie Cho, Special Counsel, and Frank Genco, Special Counsel, Division, Commission, on October 12, 2004.

PCX Rule 6.87 and add new ones that relate to: (1) Disclosing the identity of parties to an obvious error transaction (Commentary .03 to PCX Rule 6.87); (2) inclusion of options with zero bid and offered at a nickel (Commentary .03 to PCX Rule 6.87—modified from the Exchange's existing Rule 6.87(g)(2)(F)—relating to no bid erroneous executions); (3) defining the options exchange providing the most liquidity (Commentary .05 to PCX Rule 6.87); and (4) defining erroneous sell transactions and erroneous buy transactions (Commentary .06 to PCX Rule 6.87). The Exchange also seeks to add a cross reference to its hearing and review rule, PCX Rule 10.14(a)(5), to include PCX Rule 6.87 as a rule from which a potentially aggrieved party may appeal a decision under PCX Rule 10.14.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any significant burden on competition.

*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.

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

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Furthermore, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

The PCX has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that waiver of the 30-day operative delay would enable the Exchange to implement the proposal as quickly as possible. In addition, the Commission notes that the proposal to amend the PCX obvious error rule is substantially identical to ISE Rule 720. Thus, the Commission does not believe that the proposed rule change raises any new regulatory issues.[13] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

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

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–87 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–2004–87. 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 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–2004–87 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4–2799 Filed 10–21–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3620]**

### State of Florida (Amendment #6)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective October 8, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 3, 2004, and continuing through October 8, 2004.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is December 11, 2004 and for economic injury the deadline is June 6, 2005.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *See* Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (amending ISE obvious error rule).

[14] For 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).

[15] 17 CFR 200.30-3(a)(12).

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 14, 2004.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 04–23640 Filed 10–21–04; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3639]**

### State of Minnesota (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 27, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 14, 2004, and continuing through September 27, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 6, 2004 and for economic injury the deadline is July 7, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–23638 Filed 10–21–04; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3636]**

### State of New Jersey (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective October 1, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 18, 2004, and continuing through October 1, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 30, 2004 and for economic injury the deadline is July 1, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 14, 2004.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 04–23639 Filed 10–21–04; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3638]**

### State of South Carolina (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective October 11, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 6, 2004, and continuing through October 11, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 6, 2004 and for economic injury the deadline is July 7, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 14, 2004.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 04–23631 Filed 10–21–04; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3640]**

### State of Tennessee

Cocke and Rhea Counties and the contiguous counties of Bledsoe, Cumberland, Greene, Hamblin, Hamilton, Jefferson, Meigs, Roane, and Sevier in the State of Tennessee; and Haywood, Madison, and Swain Counties, North Carolina constitute a disaster area as a result of heavy rains associated with Hurricane Ivan on September 16–20, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 14, 2004 and for economic injury until the close of business on July 15, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 6.375 |
| Homeowners Without Credit Available Elsewhere | 3.187 |
| Businesses With Credit Available Elsewhere | 5.800 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 2.900 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.875 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 2.900 |

The number assigned to this disaster for physical damage is 364008 for Tennessee and 364108 for North Carolina. The number assigned to this disaster for economic injury damage is 9AF200 for Tennessee and 9AF300 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 15, 2004.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 04–23630 Filed 10–21–04; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3594]**

### State of Wisconsin (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 13, 2004, the above numbered declaration is hereby amended to reopen the filing period for this disaster. The new deadline for filing applications for physical damage is November 8, 2004.

In addition, this amendment hereby establishes the incident period as beginning May 7, 2004 and continuing through July 3, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is March 21, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 14, 2004.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 04–23637 Filed 10–21–04; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 4877]**

### In the Matter of the Redesignation of Jemaah Islamiyah (Including Any and All Transliterations of Its Name) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189, hereinafter ''INA''), exist with respect to Jemaah Islamiyah.

Therefore, effective October 22, 2004, the Secretary of State hereby redesignates that organization as a foreign terrorist organization pursuant to section 219(a) of the INA.

Dated: October 15, 2004.

**William P. Pope,**

*Acting Coordinator for Counterterrorism, Department of State.*

[FR Doc. 04–23592 Filed 10–21–04; 5:00 pm]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice 4879]**

### Bureau of Nonproliferation: Determination Under the Foreign Assistance Act and Several Foreign Operations and Related Programs Appropriations Acts

**AGENCY:** Department of State.

**ACTION:** Notice.

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Deputy Secretary of State has made a determination pursuant to section 620H of the Foreign Assistance Act, and Section 543 of the Foreign Operations, Export Financing and Related Programs Appropriations, Division D, of the Consolidated Appropriations Resolution, 2004 (Pub. L. 108–199) and similar provisions in previous year Foreign Operations, Export Financing, and Related Programs Appropriations Acts, and Executive Order 12163, as amended. The Deputy Secretary of State has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: October 14, 2004.

**Susan F. Burk,**

*Acting Assistant Secretary of State for Nonproliferation, Department of State.*

[FR Doc. 04–23700 Filed 10–21–04; 8:45 am]

**BILLING CODE 4710–27–P**

## DEPARTMENT OF STATE

**[Public Notice 4878]**

### Bureau of Nonproliferation; Imposition of Discretionary Measures Against Bulgarian Entities Beta JSC and KAS Engineering Consortium/BMG–M OOD for Transfer of Certain Military Equipment to a State Sponsor of Terrorism

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The United States Government has determined that the Bulgarian entities Beta JSC and KAS Engineering Consortium/BMG–M OOD transferred certain military equipment to a state sponsor of terrorism. Further notice is hereby given that it is the policy of the United States Government to deny all U.S. Government assistance to Beta JSC and KAS Engineering Consortium/BMG–M OOD for a period of one year, and that U.S. Government Procurement from these entities and new licenses for the import and export of defense articles and services insuring these entities will be banned for a period of one year and that U.S. government procurement from these entities and new licenses for the import and export of defense articles and services involving these entities will be banned for a period of one year.

**EFFECTIVE DATE:** The date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** On general issues: Ronald S. Parson, Office of Export Controls and Conventional Arms Nonproliferation Policy, Bureau of Nonproliferation, Department of State (202–647–0397).

**SUPPLEMENTARY INFORMATION:** On September 21, 2004 the United States Government determined that the entities Beta JSC and KAS Engineering Consortium/BMG–M OOD transferred certain military equipment to a state sponsor of terrorism. As a matter of policy, United States Government assistance will be denied to Beta JSC and KAS Engineering Consortium/BMG–M OOD for one year. The appropriate officials have been directed to implement additional measures against Beta JSC and KAS Engineering Consortium/BMG–M OOD, consisting of denial of U.S. Government procurement for one year and denial of new licenses and other approvals for exports and imports of defense articles and services for one year.

Dated: October 14, 2004.

**Susan F. Burk,**

*Acting Assistant Secretary of State for Nonproliferation, Department of State.*

[FR Doc. 04–23699 Filed 10–21–04; 8:45 am]

**BILLING CODE 4710–27–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 13, 2004, page 42078.

**DATES:** Comments must be submitted on or before November 22, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

1. *Title:* Commuter Operations and General Certification and Operations Requirements.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–00593

*Forms(s):* FAA Form 8400–6.

*Affected Public:* A total of 2,445 aircraft operators.

*Abstract:* The respondents to this information collection are FAR Part 135 and 121 operators. The FAA will use the information collected to ensure compliance and adherence to regulations.

*Estimated Annual Burden Hours:* An estimated 8,869 hours annually.

2. *Title:* Criteria for Internet Communications of Aviation Weather, Notice to Airmen, and Aeronautical Data.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0672.

*Forms(s):* N/A.

*Affected Public:* A total of 10 respondents.

*Abstract:* An Advisory Circular (AC) establishes criteria for Qualified Internet Communications Providers (QICP), who provide access to aviation weather, Notice to Airmen (NOTAM) and aeronautical data via the Public Internet. The AC describes procedures for a provider to become and remain an FAA approved QICP, and the information collected is used to determine the provider's eligibility.

*Estimated Annual Burden Hours:* An estimated 2,873 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 technique or other forms of information technology.

Dated: Issued in Washington, DC on October 18, 2004.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.*

[FR Doc. 04–23670 Filed 10–21–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of One New Public Collection of Information

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites the public comment on one public information collection which will be submitted to OMB for renewal.

**DATES:** Comments must be received on or before December 21, 2004.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Street at the above address or on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearance of the following information collection.

1. 2120–XXXX, National Assessment of General Aviation Single Engine Land Pilots. The Civil Aerospace Medical Institute (CAMI) will collect the information on behalf of the Federal Aviation Administration's (FAA) Flight Standards (AFS) organization. Newly certified general aviation (GA) Airplane Single-Engine Land (ASEL) pilots within the United States will receive an anonymous and voluntary survey to complete and return by mail. The information collected will be used to assess pilots' experiences during the certification process. CAMI will be responsible for the logistical details associated with mailing out surveys and collecting and processing the responses. The current estimated annual reporting burden is 6,250 hours.

Issued in Washington, DC on October 15, 2004.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, APF–100.*

[FR Doc. 04–23672 Filed 10–21–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Associate Administrator for Commercial Space Transportation Notice of Availability and Request for Comment on a Draft Supplemental Environmental Assessment (EA) for the East Kern Airport District (EKAD) Launch Site Operator License for the Mojave Airport, CA

**AGENCY:** Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation (AST) prepared the Draft Supplemental EA.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** In accordance with National Environmental Policy Act (NEPA) regulations, the FAA is initiating a public review and comment period for a Draft Supplemental EA. In February 2004, the FAA released a Final Environmental Assessment for the East Kern Airport District Launch Site Operator License for the Mojave Airport, which analyzed the environmental impacts of operating a launch site at the Mojave Airport in Mojave, California. The February 2004 EA was prepared to support an application from EKAD to operate a licensed launch facility at the Mojave Airport. Two types of launch vehicles were included in the analysis as typical vehicles that would operate from the Mojave Airport. The first vehicle type, referred to in the EA as Concept A, includes air-drop designs where two vehicles, an airplane and a launch vehicle are mated together, and the airplane carries the launch vehicle to a predetermined altitude where the launch vehicle is dropped and its rocket engines ignite. The second vehicle type referred to in the EA as Concept B includes horizontally launched vehicles, which use rocket power to takeoff from a standard aviation runway.

The FAA issued a launch license to Scaled Composites, Limited Liability Corporation (LLC) on April 7, 2004 for launches of the SpaceShipOne vehicle, which is similar to Concept A launch vehicles described and analyzed in the February 2004 EA. The February 2004 EA considered the environmental impacts of launching up to six (6) Concept A launch vehicles from the Mojave Airport in 2004. To ensure that Scaled Composites and other potential Concept A vehicle operators would have maximum flexibility in using the Mojave Airport to support their launch programs, the Draft Supplemental EA considers the environmental impacts of

four (4) additional Concept A launches in 2004 for a maximum of 10 launches in 2004. The Draft Supplemental EA considers the cumulative impacts of the six (6) previously analyzed launches, the four (4) additional launches of Concept A vehicles, and other existing and proposed operations at the Mojave Airport.

**DATES:** The public comment period for the NEPA process begins with the publication of this notice and request for comment in the Federal Register. To ensure that all comments can be addressed in the Final Supplemental EA, comments must be received by the FAA no later than November 24, 2004.

Copies of the Draft Supplemental EA will be made available at the following libraries:

- Edwards Air Force Base Library
- Kern County Library (Boron, California City, Mojave, and Tehachapi Branches)
- Kern River Valley Library (Lake Isabella and Rosamond Branches)
- Palmdale City Library

A downloadable electronic version of the Draft Supplemental EA is available on the FAA Internet site *http://ast.faa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Written and oral comments regarding the Draft Supplemental EA should be submitted to, Mr. Doug Graham, FAA Environmental Specialist, Mojave Airport Supplemental EA, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031; e-mail *mojave.sea@icfconsulting.com*; or fax (703) 934–3951.

*Additional Information:* The purpose of the proposed action is to offer the Mojave Airport as an alternative location to Federal facilities or other commercial sites for launches of horizontal launch vehicles. This is consistent with the FAA's mission to ensure protection of the public, property, and the national security and foreign policy interests of the U.S., in the event of a commercial launch or reentry activity, and to encourage, facilitate, and promote U.S. commercial space transportation. Launches of SpaceShipOne and other Concept A launch vehicles from the Mojave Airport are needed to help meet the increasing demand for access to space. This demand for access to space cannot be met solely by the National Aeronautics and Space Administration (NASA) or Department of Defense (DoD). As the demand continues to increase it is conceivable that more than six (6) launches of Concept A launch vehicles may be required in 2004.

At this time, SpaceShipOne is the only operational Concept A vehicle that can launch from the Mojave Airport. Scaled Composites has notified EKAD that they may need to conduct up to 10 launches in 2004. The proposed action in the Draft Supplemental EA is for the FAA to license up to four (4) additional launches of Concept A vehicles from the Mojave Airport in 2004. There are no Concept B launches proposed in 2004. This would bring the maximum total number of launches of Concept A vehicles to 10 for 2004. Neither Scaled Composites, nor any other potential Concept A vehicle operator has identified a need to conduct more than six (6) launches per year in the years 2005 to 2008. Because there is no reasonably foreseeable need to conduct more than six (6) launches per year in 2005 to 2008, no additional launches are considered in subsequent years and the number of launches would remain as described in the February 2004 EA.

No construction activities are proposed as part of this proposed action. Existing infrastructure, including hangars and runways, would be used to support launch and landing operations at the airport.

Concept A launch operators would coordinate with the Mojave Airport and air traffic control towers in accordance with existing protocols prior to conducting launches and landings at the Mojave Airport.

Under the no action alternative, the FAA would not increase the number of licensed launches of Concept A vehicles. As analyzed in the February 2004 EA, six (6) total launches of Concept A vehicles could occur from the Mojave Airport in 2004; however, the four (4) additional proposed launches would not occur.

Potential impacts of the proposed action and no action alternative were analyzed in the Draft Supplemental EA. Potential environmental impacts of successful launches include impacts to air quality, airspace, biological resources, cultural resources, health and safety, hazardous materials and hazardous waste, geology and soils, land use, noise, socioeconomics and environmental justice, transportation, visual and aesthetic resources, and water resources. The impacts of the no action alternative would be the same as those described in the February 2004 EA.

Potential cumulative impacts of proposed action are also addressed in the Draft Supplemental EA.

Date Issued: October 18, 2004. Washington, DC.

**Herbert Bachner,**

*Manager, Space Systems Development Division.*

[FR Doc. 04–23669 Filed 10–21–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

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

**ACTION:** Notice of RTCA Special Committee 186 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

**DATES:** The meeting will be held November 1–5, 2004 starting at 9 a.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. **Note:** *Specific working group sessions will be held on November 1, 2 & 3.* The plenary agenda will include:

- November 4–5:
- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary).
- SC–186 Activity Reports.
- WG–1, Operations & Implementation.
- WG–2, Traffic Information Service—Broadcast (TIS–B).
- WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS).
- WG–4, Application Technical Requirements.
- WG–5, Universal Access Transceiver (UAT) MOPS.
- WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS).

- Requirement Focus Group.
- EUROCAE WG–51 Activity Report.
- Discussion of Working Group Structure.
- Discussion of inter-committee coordination & discussion of future changes to DO–242A.
- Vehicle Tracking System AC SF–21.
- New Business.
- Review/Approval Revised DO–286, Minimum Aviation System Performance Standards (MASPS) for Traffic Information Service—Broadcast (TIS–B), RTCA Paper No. 159–04/SC186–223.
- Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/Work Program, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 13, 2004.

**Robert Zoldos,**

*FAA System Engineer, RTCA Advisory Committee.*

[FR Doc. 04–23671 Filed 10–21–04; 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 September 2004, there were three applications approved. This notice also includes information on two applications, approved in August 2004, inadvertently left off the August 2004 notice. Additionally, 15 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) (Pub. L. 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 Charlotte, North Carolina.

*Application Number:* 04–01–C–00–CLT.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $514,701,943.

*Earliest Charge Effective Date:* November 1, 2004.

*Estimated Charge Expiration Date:* December 1, 2018.

*Class of Air Carriers not Required to Collect PFC's:* Air taxi/commercial operators.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Charlotte/Douglas International Airport.

*Brief Description of Projects Approved for Collection and Use:*

Third parallel runway.
Overlay runway 18L/36R.
Runway 18L safety area improvements.
Rehabilitate runway 18R/36L
Runway 23 safety area improvements.
Reconstruct taxiway C.
Ramp E expansion.
Construct taxiway AA.
Storm drain rehabilitation.
East airfield lighting vault.
Additional aircraft rescue and firefighting facility.
Taxiway M rehabilitation.
Noise compatibility program update.
Federal inspection station.
Terminal building renovations.
Terminal expansion—west.
Additional concourse D expansion.
Concourse E improvements.
Dedicated roadway projects.
1997 master plan land.
1987 Part 150 program mitigation implementation.
1997 Part 150.
Concourse D expansion.
Concourse E construction.
Concourse E apron construction.
Terminal building expansion.
Construct cargo apron.
Construct taxiways L and U.
Taxiway signage.
Security access control system upgrade.
Runway 36R extension site preparation.
Passenger lift device.
Airfield lighting.
Runway 36R extension.
Reseal taxiways E and B.
Construct high-speed exit taxiways.
Overlay runway 5/23.
Construct taxiway D2.
Construct taxiway F.
Master plan.
Environmental planning.
Construct common use apron (phase II).
Construct taxiway G.
Archaeological survey.
South terminal expansion.
PFC application no. 1 development cost.
PFC application no. 1 administration cost.

*Brief Description of Project Approved for Collection:* Aircraft deicing facility.

*Decision Date:* August 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Tracie D. Kleine, Atlanta Airports District Office, (404) 305–7148.

*Public Agency:* City of Sioux City, Iowa.

*Application Number:* 04–04–C–00–SUX.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $258,095.

*Earliest Charge Effective Date:* November 1, 2004.

*Estimated Charge Expiration Date:* May 1, 2006.

*Classes of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Rehabilitation of taxiway Bravo.
Reconstruction of taxiway Charlie.
Reconstruction of the air carrier ramp.
Update airport master plan.
Replacement of snow plow no. 29.
Reconstruction of taxiway Alpha south.
Reconstruction of taxiway Echo.

*Decision Date:* August 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

*Public Agency:* County of Routt, Hayden, Colorado.

*Application Number:* 04–06–C–00–HDN.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in this Decision:* $1,051,057.

*Earliest Charge Effective Date:* August 1, 2005.

*Estimated Charge Expiration Date:* September 1, 2008.

*Classes of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Commercial terminal expansion/modification (phase I).
Commercial terminal expansion/modification with associated access road (phases II and III design).
Commercial apron rehabilitation.
Security badging upgrade.
Commercial apron expansion (design).

*Decision Date:* September 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

*Public Agency:* City of Austin, TX.

*Application Number:* 04–05–C–00–AUS.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in this Decision:* $4,125,000.

*Earliest Charge Effective Date:* January 1, 2020.

*Estimated Charge Expiration Date:* May 1, 2020.

*Class of Air Carriers Not Required to Collect PFC's:* Non-scheduled on-demand air carriers (formerly called the air taxi/commercial operators) that file FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Austin-Bergstrom International Airport.

*Brief Description of Project Approved for Collection and Use:* Explosive detection system installation and associated baggage handling system.

*Decision Date:* September 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

*Public Agency:* Northwest Alabama Regional Airport Authority, Muscle Shoals, AL.

*Application Number:* 04–04–C–00–MSL.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $57,355.

*Earliest Charge Effective Date:* December 1, 2004.

*Estimated Charge Expiration Date:* April 1, 2009.

*Class of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Project Approved for Collection and Use:*

Construct taxiway E, phases II and III.
Purchase passenger life device.
Commuter passenger walkway.
Taxiway B Extension to runway 18.
Rehabilitate runway 11/29 and associated taxiway A.

*Decision Date:* September 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Roderick T. Nicholson, Jackson Airports District Office, (601) 664–9884.

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 |
|---|---|---|---|---|---|
| 00–03–C–01–MCI, Kansas City, MO | 07/20/04 | $99,645,586 | $63,402,166 | 05/01/13 | 10/01/17 |
| 99–01–C–04–ACY, Atlantic City, NJ | 08/04/04 | 9,578,258 | 9,125,209 | 09/01/05 | 07/01/05 |
| 99–01–I–01–BFF, Scottsbluff, NE | 09/13/04 | 108,000 | 0 | 03/01/03 | 03/01/03 |
| 04–02–C–01–BFF, Scottsbluff, NE | 09/13/04 | 112,700 | 1,299,534 | 04/01/07 | 07/01/24 |
| 97–03–C–02–ONT, Ontario, CA | 09/21/04 | 80,680,000 | 92,680,000 | 09/01/05 | 07/01/05 |
| *97–02–C–02–FAT, Fresno, CA | 09/22/04 | 54,531,000 | 54,531,000 | 07/01/30 | 01/01/20 |
| 04–04–C–01–IYK, Inyokern, CA | 09/22/04 | 36,183 | 51,000 | 10/01/04 | 10/01/04 |
| 95–01–C–01–MSS, Massena, NY | 09/22/04 | 200,079 | 163,429 | 11/01/05 | 11/01/05 |
| 02–05–C–04–BGM, Binghamton, NY | 09/27/04 | 4,567,151 | 4,635,407 | 02/01/05 | 07/01/05 |
| 03–06–C–01–BGM, Binghamton, NY | 09/27/04 | 7,996 | 7,996 | 03/01/05 | 08/01/05 |
| 01–01–C–01–PIT, Pittsburgh, PA | 09/27/04 | 119,803,191 | 94,845,514 | 10/01/06 | 04/01/07 |
| 03–02–U–01–PIT, Pittsburgh, PA | 09/27/04 | NA | NA | 10/01/06 | 04/01/07 |
| 95–01–C–01–OAJ, Jacksonville, NC | 09/28/04 | 674,041 | 208,878 | 04/01/97 | 04/01/97 |
| *01–01–C–02–PIT, Pittsburgh, PA | 09/29/04 | 94,845,514 | 94,845,514 | 04/01/07 | 10/01/06 |
| 03–02–U–01–PIT, Pittsburgh, PA | 09/29/04 | NA | NA | 04/01/07 | 10/01/06 |

**Note:** The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Fresno, CA and Pittsburgh, PA, this change is effective on December 1, 2004.

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

**JoAnn Horne,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 04–23673 Filed 10–21–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34533]**

### Southwestern Railroad Company, Inc.—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Southwestern Railroad Company, Inc. (SWRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to lease and operate from The Burlington Northern and Santa Fe Railway Company the following 227.6 miles of rail line located: (1) On the Carlsbad Subdivision between milepost 0.5, at Clovis, NM, and milepost 183.0, at Carlsbad, NM; (2) in the Carlsbad Yard;[1] (3) on the Carlsbad Industrial Spur between milepost 0.0 and milepost 20.0, at Carlsbad, NM; and (4) on the Loving Industrial Spur between milepost 0.0, at Carlsbad, NM, and milepost 20.0, at Loving, NM.

Because SWRR's projected annual revenues will exceed $5 million, SWRR certified to the Board on August 4, 2004, that, on July 29, 2004, it had posted the required 60-day notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line and that, on August 4, 2004, it had served a copy of the notice of intent on the national offices of all labor unions with employees on the rail line. *See* 49 CFR 1150.42(e).

SWRR states that it intended to consummate the transaction on or after the October 3, 2004 effective date of the exemption (60 days after its certification to the Board under 49 CFR 1150.42(e)).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34533, must be filed with the Surface Transportation Board, 1925

[1] SWRR states that there are no milepost designations associated with this 5.1-mile line of railroad located in the Carlsbad Yard.

K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 19, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–23770 Filed 10–21–04; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–6 (Sub-No. 418X)]**

### The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Grand Forks County, ND

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 6.50-mile line of railroad between BNSF milepost 0.00 near Hannah Junction and milepost 6.50 near McCanna, in Grand Forks County, ND. The line traverses United States Postal Service Zip Code 58251.

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 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 met.

As a condition to this exemption, any employees 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 become effective November 23, 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 November 1, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 12, 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 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 October 29, 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), 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 October 22, 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: October 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–23369 Filed 10–21–04; 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, but is scheduled to increase to $1,200, effective October 31, 2004. *See Regulations Governing Fees for Services performed in connection with Licensing and Related Services—2004 Update,* STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004). *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–57 (Sub–No. 54X)]**

### Soo Line Railroad Company—Abandonment Exemption—in Ramsey and Benson Counties, ND

The Soo Line Railroad Company (Soo Line) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 28.35 ± mile line of railroad between milepost 446.0 ± in Devils Lake, Ramsey County, ND, and milepost 474.35 ± in Harlow, Benson County, ND. The line traverses United States Postal Service Zip Codes 58301, 58325, 58346, 58351 and 58362.

Soo Line has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic can be and has been 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 November 23, 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 November 1, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 12, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

Soo Line states that the line is the stub end of a grain branch line leased to Northern Plains Railroad, Inc. (NPRR). *See Northern Plains Railroad, Inc.—Lease and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway,* STB Docket No. 33324 (STB served Jan. 9, 1997). Although Soo Line states that NPRR has approved its abandonment proposal, Soo Line may not consummate the abandonment authority granted here unless and until NPRR files with the Board to discontinue its lease and operation rights on the line, NPRR obtains discontinuance authority, and NPRR exercises that authority. *See Thompson* v. *Texas Mexican Ry.,* 328 U.S. 134 (1946).

A copy of any petition filed with the Board should be sent to Soo Line's representative: Annie Littlefield, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Soo Line 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 October 29, 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), Soo Line 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 Soo Line's filing of a notice of consummation by October 22, 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: October 18, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–23721 Filed 10–21–04; 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, but which will increase to $1,200, effective October 31, 2004. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update,* STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Information Collection; Comment Request

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB's Recordkeeping Requirement Number 5150/1 titled ''Usual and Customary Business Records Relating to Denatured Spirits.''

**DATES:** We must receive your written comments on or before December 21, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Usual and Customary Business Records Relating to Denatured Spirits.

*OMB Number:* 1513–0062.

*TTB Recordkeeping Requirement Number:* 5150/1.

*Abstract:* Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. The records are maintained at the premises of the regulated individual and are routinely inspected by TTB personnel during field tax compliance examinations. These examinations are necessary to verify that all specially denatured spirits can be accounted for and are being used only for purposes authorized by laws and regulations. By ensuring that spirits have not been diverted to beverage use, tax revenue and public safety are protected. There is no additional recordkeeping imposed on the respondent as these requirements are usual and customary business records.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 3,111.

*Estimated Total Annual Burden Hours:* One (1).

### Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection.

All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: September 27, 2004.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 04–23688 Filed 10–21–04; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–104072–97]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–104072–97 (TD 8853), Recharacterizing Financing Arrangements Involving Fast-Pay Stock (§ 1.7701(l)–3).

**DATES:** Written comments should be received on or before December 21, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Joe Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Recharacterizing Financing Arrangements Involving Fast-Pay Stock.

*OMB Number:* 1545–1642.

*Regulation Project Number:* REG–104072–97.

*Abstract:* Section 1.7701(l)–3 recharacterizes fast-pay arrangements. Certain participants in such arrangements must file a statement that includes the name of the corporation that issued the fast-pay stock, and (to the extent the filing taxpayer knows or has reason to know) the terms of the fast-pay stock, the date on which it was issued, and the names and taxpayer identification numbers of any shareholders of any class of stock that is not traded on an established securities market.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 50.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 18, 2004.

**Joe Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–23749 Filed 10–21–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–209830–96]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209830–96 (TD 8779), Estate and Gift Tax Marital Deduction.

**DATES:** Written comments should be received on or before December 21, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Paul Finger, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Estate and Gift Tax Marital Deduction.

*OMB Number:* 1545–1612.

*Regulation Project Number:* REG–209830–96.

*Abstract:* The information requested in regulation section 20.2056(b)–7(d)(3)(ii) is necessary to provide a method for estates of decedents whose estate tax returns were due on or before February 18, 1997, to obtain an extension of time to make the qualified terminable interest property (QTIP) election under section 2056(b)(7)(B)(v).

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Individual or households.

The estimated reporting burden in this regulation is reflected in the burden of Form 843, Claim for Refund and Request for Abatement, and Forms 706 and 706–NA, United States Estate (and Generation-Skipping Transfer) Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2004.

**Paul Finger,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–23750 Filed 10–21–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–268–82]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–268–82 (TD 8696), Definitions Under Subchapter S of the Internal Revenue Code (Section 1.1377–1).

**DATES:** Written comments should be received on or before December 21, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Paul Finger, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Definitions Under Subchapter S of the Internal Revenue Code.

*OMB Number:* 1545–1462.

*Regulation Project Number:* PS–268–82.

*Abstract:* Section 1.1377–1(b)(4) of the regulation provides that an S corporation making a terminating election under Internal Revenue Code section 1377(a)(2) must attach a statement to its timely filed original or amended return required to be filed under Code section 6037(a). The statement must provide information concerning the events that gave rise to the election and declarations of consent from the S corporation shareholders.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations, and individuals.

*Estimated Number of Respondents:* 4,000.

*Estimated Time Per Respondent:* 15 mins.

*Estimated Total Annual Burden Hours:* 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2004.

**Paul Finger,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–23751 Filed 10–21–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–54–94]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–54–94 (TD 8668), Environmental Settlement Funds—Classification (Section 301.7701–4).

**DATES:** Written comments should be received on or before December 21, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Paul Finger, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Environmental Settlement Funds—Classification.

*OMB Number:* 1545–1465.

*Regulation Project Number:* PS–54–94.

*Abstract:* This regulation provides guidance to taxpayers on the proper classification of trusts formed to collect and disburse amounts for environmental remediation of an existing waste site to discharge taxpayers' liability or potential liability under applicable environmental laws. Section 301.7701–4(e)(3) of the regulation provides that the trustee of an environmental remediation trust must furnish to each grantor a statement that shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor. The statement must provide the grantor with the information necessary to take the items into account in computing the grantor's taxable income.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 4 hours.

*Estimated Total Annual Burden Hours:* 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2004.

**Paul Finger,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–23752 Filed 10–21–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
October 22, 2004

# Part II

# Department of Health and Human Services

## 42 CFR Part 484

## Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 484**

**[CMS–1265–F]**

**RIN 0938–AM93**

## Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005

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

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. As part of this final rule, we are also rebasing and revising the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. In addition, we are revising the fixed dollar loss ratio, which is used in the calculation of outlier payments. This final rule will be the first update of the home health prospective payment system (HH PPS) rates on a calendar year update cycle. HH PPS was moved to a calendar year update cycle as a result of the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

**EFFECTIVE DATE:** These regulations are effective on January 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Randy Throndset, (410) 786–0131. Debra Gillespie, (410) 786–4631. Mary Lee Seifert (Market Basket), (410) 786–0030. Mollie Knight (Market Basket), (410) 786–7948.

**SUPPLEMENTARY INFORMATION:**

*Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.gpoaccess.gov/fr/index.html.*

### I. Background

#### *A. Statutory Background*

The Balanced Budget Act of 1997 (BBA), (Pub. L. 105–33), enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Until the implementation of a home health prospective payment system (HH PPS) on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system. Section 4603 of the BBA governed the development of the HH PPS.

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services provided under a plan of care that were paid on a reasonable cost basis by adding section 1895, entitled ‘‘Prospective Payment For Home Health Services,’’ to the Social Security Act (the Act).

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable increase percentage as specified in the statute.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for the different area wage levels for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year cannot exceed 5 percent of total payments projected or estimated.

#### *B. Updates*

On July 3, 2000, we published a final rule (65 FR 41128) in the **Federal Register** to implement the HH PPS legislation. That final rule established requirements for the new PPS for HHAs as required by section 4603 of the BBA, and as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277), enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113), enacted on November 29, 1999. The requirements include the implementation of a PPS for HHAs, consolidated billing requirements, and a number of other related changes. The PPS described in that rule replaced the retrospective reasonable-cost-based system that was used by Medicare for the payment of home health services under Part A and Part B.

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in a separate **Federal Register** document.

#### *C. System for Payment of Home Health Services*

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment, adjusted for case mix and wage index. For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the 60-day episode payment for certain intervening events that give rise to a partial episode payment adjustment (PEP adjustment) or a significant change in condition adjustment (SCIC). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available. For a complete and full description of the HH PPS as required by the BBA and as amended by OCESAA and BBRA, see the July 3, 2000 HH PPS final rule (65 FR 41128).

*D. Medicare Prescription Drug, Improvement, and Modernization Act of 2003*

On December 8, 2003, the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173). This new legislation affects our update to HH payment rates. Specifically, section 421 of MMA requires, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), with respect to episodes or visits ending on or after April 1, 2004 and before April 1, 2005, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 5 percent.

The statute waives budget neutrality for the purposes of this increase as it specifically states that the Secretary will not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

Section 701 of the MMA changes the yearly update cycle of the HH PPS rates from that of a fiscal year to a calendar year update cycle for 2004 and any subsequent year. Generally, section 701(a) of the MMA changes the references in the statute to refer to the calendar year for 2004 and any subsequent year. The changes result in updates to the HH PPS rates described as ''fiscal year'' updates for 2002 and 2003 and as calendar ''year'' updates for 2004 and any subsequent year (section 1895(b)(3)(B)(i) of the Act). In light of these provisions, we will not be updating the HH PPS rates on October 1, 2004 as HH PPS will now be updated on a calendar year update cycle.

In addition to changing the update cycle for HH PPS rates, section 701 of the MMA makes adjustments to the home health applicable increase percentage for 2004, 2005, and 2006. Specifically, section 701(a)(2)(D) of the MMA leaves unchanged the home health market basket increase for the last calendar year quarter of 2003 and the first calendar year quarter of 2004 (section 1895(b)(3)(B)(ii)(II) of the Act). Furthermore, section 701(b)(4) of the MMA sets the home health applicable percentage increase for the last 3 quarters of 2004 as the home health market basket (3.1 percent) minus 0.8 percentage points (section 1895(b)(3)(B)(ii)(III) of the Act). We implemented this provision through Pub. 100–20, One Time Notification, Transmittal 59, issued February 20, 2004. Section 701(b)(4) of the MMA also provides that updates for CY 2005 and CY 2006 will equal the applicable home health market basket percentage increase minus 0.8 percentage points. Lastly, section 701(b)(3) of the MMA revises the statute to provide that HH PPS rates for CY 2007 and any subsequent year will be updated by that year's home health market basket percentage increase (section 1895(b)(3)(B)(ii)(IV) of the Act).

*E. Requirements for Issuance of Regulations*

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule finalizes provisions set forth in proposed rule published in the **Federal Register** (69 FR 31248) on June 2, 2004. In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that the final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

## II. Provisions of the Proposed Regulations

On June 2, 2004, we published a proposed rule in the **Federal Register** (69 FR 31248), proposing to update the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. We also proposed to rebase and revise the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. We also proposed to revise the fixed dollar loss ratio, which is used in the calculation of outlier payments.

*A. National Standardized 60-Day Episode Rate*

Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under Medicare HH PPS is a national standardized 60-day episode rate. As set forth in 42 CFR 484.220, we adjust the national standardized 60-day episode rate by a case mix grouping and a wage index value based on the site of service for the beneficiary. The proposed CY 2005 HH PPS rates used the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the July 3, 2000 final rule. We multiplied the national 60-day episode rate by the patient's applicable case-mix weight. We divided the case-mix adjusted amount into a labor and non-labor portion. We multiplied the labor portion by the applicable wage index based on the site of service of the beneficiary.

As required by section 1895(b)(3)(B) of the Act, we have updated the HH PPS rates annually in a separate **Federal Register** document. Section 484.225 sets forth the specific percentage update for fiscal years 2001, 2002, and 2003. To reflect the new statutory provisions enacted by section 701 of the MMA, in § 484.225, we proposed to redesignate paragraph (d) as paragraph (g) and revise it to read as follows:

(g) For 2007 and subsequent calendar years, the unadjusted national rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount.

We also proposed to add new paragraphs (d), (e), and (f) to read as follows:

(d) For the last calendar quarter of 2003 and the first calendar quarter of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket index amount.

(e) For the last 3 calendar quarters of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket minus 0.8 percentage points.

(f) For each of calendar years 2005 and 2006, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous calendar year, increased by the applicable home health market basket minus 0.8 percentage points.

We also proposed to rebase and revise the home health market basket. As proposed, the labor related portion of the rebased and revised home health market basket would be 76.775 percent, and the non-labor portion would be 23.225 percent. We added the wage-adjusted portion to the non-labor portion yielding the case-mix and wage-adjusted 60-day episode rate subject to applicable adjustments.

For CY 2005, we proposed to use again the design and case-mix methodology described in section III.G of the HH PPS July 3, 2000 final rule (65 FR 41192 through 41203). For CY 2005, we proposed to base the wage index adjustment to the labor portion of the PPS rates on the most recent pre-floor and pre-reclassified hospital wage index that does not apply the core-based statistical area (CBSA) policy. As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit amounts by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary as set forth in § 484.230. We proposed to adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index that does not apply the CBSA policy.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines the rate level at which Medicare will pay the claim for the fiscal period.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- A significant change in condition adjustment as set forth in § 484.205(e) and § 484.237.
- An outlier payment as set forth in § 484.205(f) and § 484.240.

The proposed rule reflected the updated CY 2005 rates that would be effective January 1, 2005.

*B. Rebasing and Revising of the Home Health Market Basket*

We also proposed to rebase and revise the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. In addition to rebasing the base year cost structure from FY 1993 to FY 2000, we also proposed to revise the market basket by modifying several categories in the market basket cost structure. The major revision to the proposed market basket was the combining of the Administrative and General and Other Expenses cost categories. [See 69 FR 31251 for a more complete explanation of the market basket cost structure]

*C. Proposed CY 2005 Update to the Home Health Market Basket Index*

Section 1895(b)(3)(B) of the Act, as amended by section 701 of the MMA, requires for CY 2005 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket increase minus 0.8 percentage points. We proposed to amend the regulations in § 484.225 to reflect this requirement.

- *Proposed CY 2005 Adjustments.*

In calculating the annual update for the CY 2005 60-day episode rates, we proposed to first look at the CY 2004 rates as a starting point. The CY 2004 national 60-day episode rate, as modified by section 701 of the MMA and implemented through Pub. 100–20 One Time Notification, Transmittal 59 issued February 20, 2004 is $2,213.37.

In order to calculate the CY 2005 national 60-day episode rate, we proposed to multiply the CY 2004 national 60-day episode rate ($2,213.37) by the applicable home health market basket update, at the time of publication of the proposed rule, of 3.3 percent for CY 2005 minus 0.8 percentage points.

We proposed to increase the CY 2004 60-day episode payment rate by the proposed home health market basket increase (3.3 percent) minus 0.8 percentage points ($\$2,213.37 \times 2.5$ percent) to yield the proposed updated CY 2005 national 60-day episode rate ($2,268.70).

- *National Per-visit Amounts Used to Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations.*

The policies governing the LUPAs and outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue during CY 2005. In calculating the annual update for the CY 2005 national per-visit amounts we use to pay LUPAs and to compute the imputed costs in outlier calculations, we proposed to look again at the CY 2004 rates as a starting point. We then proposed to multiply those amounts by the proposed home health market basket increase minus 0.8 percentage points for CY 2005 to yield the updated per-visit amounts for each home health discipline for CY 2005. For details as to the specific LUPA rates that we proposed for CY 2005, see the proposed rule (69 FR 31256) published on June 2, 2004.

*D. Proposed Update to the Outlier Fixed Dollar Loss Ratio*

Outlier payments are payments made in addition to regular 60-day case-mix and wage-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments are made for episodes whose estimated cost exceeds a threshold amount. The episode's estimated cost is the sum of the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group, PEP adjustment, or total SCIC adjustment is defined as the 60-day episode payment amount, PEP adjustment, or total SCIC adjustment for that group plus a fixed dollar loss amount. Both components of the outlier threshold are wage-adjusted.

The wage-adjusted fixed dollar loss amount (FDL) represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. The FDL is computed by multiplying the wage-adjusted 60-day episode payment amount by the fixed dollar loss ratio, which is a proportion expressed in terms of the national standardized episode payment amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated costs beyond the wage-adjusted threshold. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

Section 1895(b)(5) of the Act requires that estimated total outlier payments are no more than 5 percent of total estimated HH PPS payments. In response to the concerns about potential financial losses that might result from unusually expensive cases expressed in comments to the October 28, 1999 proposed rule (64 FR 58133), the July 2000 final rule set the target for estimated outlier payments at the 5 percent level. The fixed dollar loss ratio and the loss-sharing ratio were then selected so that estimated total outlier payments would meet the 5 percent target.

For a given level of outlier payments, there is a trade-off between the values selected for the fixed dollar loss ratio and the loss-sharing ratio. A high fixed dollar loss ratio reduces the number of episodes that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments for outlier episodes. Alternatively, a lower fixed dollar loss ratio means that more episodes can qualify for outlier payments, but outlier payments per episode must be lower. As a result of public comments on the October 28, 1999 proposed rule, in our July 2000 final rule, we made the decision to attempt to cover a relatively high proportion of the costs of outlier cases for the most expensive episodes that would qualify for outlier payments within the 5 percent constraint.

We chose a value of 0.80 for the loss-sharing ratio, which is relatively high, but which preserves incentives for agencies to attempt to provide care efficiently for outlier cases. It is also consistent with the loss-sharing ratios used in other Medicare PPS outlier policies. Having made this decision, we estimated the value of the fixed dollar loss ratio that would yield estimated total outlier payments that were projected to be no more than 5 percent of total home health PPS payments. The resulting value for the fixed dollar loss ratio was 1.13.

Analysis of 100 percent of CY 2001 home health claims data reflected that outlier episodes represented approximately 3 percent of total episodes and 3 percent of total HH PPS payments. We proposed to make no change in the projected 5 percent target for outlier expenditures as a percent of total HH PPS payments. In addition, we proposed no change to the loss-sharing ratio of 0.80. Further, section 1895(b)(3)(C) of the Act requires that the episode payment amounts be adjusted to effectively pay for outlier payments within the same level of estimated total spending. We proposed no change to the adjustment to the episode payment amounts for outlier payments. We proposed to change only the fixed dollar loss ratio, and in turn, the fixed dollar loss amount.

For the proposed rule, we performed data analysis on CY 2001 HH PPS analytic data to update the fixed dollar loss ratio to enable the total estimated outlier payments to be 5 percent of total HH PPS payments. That analysis indicated that a fixed dollar loss ratio of 0.72 was consistent with the existing loss-sharing ratio of 0.80 and a target percentage of estimated outlier payments of the projected 5 percent. Consequently, we proposed to update the fixed dollar loss ratio from the current ratio of 1.13 to the fixed dollar loss ratio of 0.72. It was estimated that a fixed dollar loss ratio of 0.72 would allow approximately 6.5 percent of episodes to qualify for outlier payments. The estimated 6.5 percent outlier episodes is greater than the 3.0 percent of episodes that currently qualify for outlier payments, and is about the same as the 6.8 percent for outlier episodes that we estimated in our July 2000 final rule.

We believe that our proposed fixed dollar loss ratio of 0.72 preserved a reasonable degree of cost sharing, while allowing a greater number of episodes to qualify for outlier payments. In our proposed rule, we indicated our plan to update our estimate of the fixed dollar loss ratio using the most current, complete year of HH PPS data available.

*E. Rural Add-On as Required by the MMA*

Section 421 of the MMA requires, for home health services furnished in a rural area with respect to episodes and visits ending on or after April 1, 2004 and before April 1, 2005, that we increase by 5 percent the payment amount that otherwise would be made for these services. The statute waives budget neutrality related to this provision. By statute, the 5 percent rural add-on applies to home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) for episodes and visits ending on or after April 1, 2004 and before April 1, 2005. Therefore, the 5 percent rural add-on ends after the first quarter of CY 2005 for episodes and visits ending before April 1, 2005. After the rural add-on is determined, the applicable case-mix and wage index adjustment is then subsequently applied for the provision of home health services where the site of service is the non-Metropolitan Statistical Area (MSA) of the beneficiary. Similarly, the applicable wage index adjustment is subsequently applied to the LUPA per visit amounts adjusted for the provision of home health services where the site of service for the beneficiary is a non-MSA area. We implemented this provision for CY 2004 on April 1, 2004 through Pub. 100–20 One Time Notification, Transmittal 59 issued February 20, 2004. For further details as to the specific rates for HH PPS payments to beneficiaries in rural areas, see the proposed rule (69 FR 31259) published on June 2, 2004.

*F. Hospital Wage Index*

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under HH PPS to account for area wage differences. We applied the appropriate wage index value to the labor portion of the HH PPS rates based on the geographic area in which the beneficiary received home health services. We determined each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). We recognize that on June 6, 2003, the Office of Management and Budget (OMB) issued OMB Bulletin No. 03–04, announcing revised definitions of Metropolitan Statistical Areas, and new definitions of Micropolitan Statistical Areas, and Combined Statistical Areas. A copy of the Bulletin may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html.* We indicated in our proposed rule, that these new definitions would not be applied to the CY 2005 wage index used in the proposed update to the HH payment rates.

On May 18, 2004, we published a proposed rule entitled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and FY 2005 Rates'' (69 FR 28195), which discusses some of the issues associated with using these new definitions and proposes to use these new definitions for the Inpatient Hospital PPS for FY 2005. We indicated that we believed it would be appropriate to wait until the public comments on that proposed rule had been submitted and analyzed before we considered proposing any new labor market definitions in the home health context.

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. Again, as discussed in the July 3, 2000 final rule, we proposed to use the pre-floor and pre-reclassified hospital wage index to adjust the labor portion of the HH PPS rates based on the geographic area in which the beneficiary receives the home health services. We believe the use of the pre-floor and pre-reclassified hospital wage index results in the appropriate adjustment to the labor portion of the costs as required by statute. The most recent pre-floor and pre-reclassified hospital wage index available for this update of the CY 2005 home health rates was determined to be that of the 2005 pre-floor and pre-reclassified hospital wage index. Due to the mandated change from a fiscal year update cycle to that of a calendar year update cycle, the most recent pre-floor and pre-reclassified hospital wage index available for this update of the CY 2005 home health payment rates was determined to be that of the 2005 pre-floor and pre-reclassified hospital wage index.

Under previous fiscal year updates, the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication of the HH PPS fiscal year update was that of the previous year. Beginning with the CY 2005 update to home health payment rates, the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication will be that of the current year. Consequently, for our proposed CY 2005 update to the home health payment rates, we proposed to continue to use the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication. We recognized that this change to a calendar year update cycle results in using the current year's wage index values. We also note that for HH PPS rates addressed in the proposed rule, we inadvertently published the 2004 pre-floor and pre-reclassified hospital wage index. Consequently, we published a correction notice in the **Federal Register** on July 30, 2004 (69 FR 45640), replacing the inadvertently published 2004 pre-floor and pre-reclassified hospital wage index with a preliminary 2005 pre-floor and pre-reclassified hospital wage index that does not apply the CBSA policy.

## III. Analysis of and Responses to Public Comments

We received approximately 25 timely comments on the Home Health Prospective Payment System Rate Update for Calendar Year 2005 proposed rule (CMS–1265–P), published on June 2, 2004 (69 FR 31248). We have also received approximately 6 additional timely comments on the Home Health Prospective Payment System Rate Update for FY 2004 Notice (CMS–1473–NC), published on July 2, 2003 (68 FR 39764). We received comments from HHAs and other health care providers, national industry associations, suppliers and practitioners, State associations, health care consulting firms, and private citizens. The comments centered on issues such as the wage index used to update rates, home health market basket analysis, metropolitan statistical areas as they relate to the wage index, reduction in the fixed dollar loss ratio for outlier episodes, home health resource group (HHRG) payment inadequacies, responsibility of and payment for supplies in the home health episode, cost reporting requirements, and finally refinements to the HH PPS in the areas of: Case mix, LUPAs, RAPs, SCICs, PEPs, outliers, supplies, and OASIS items (that is, M0175). We have considered all comments received during the 60-day public comment period on the June 2, 2004 proposed rule, as well as from the July 2, 2003 notice. Our responses to the comments from both **Federal Register** publications, the June 2, 2004 proposed rule and the July 2, 2003 notice are set forth in the following section.

As noted in the proposed rule published in the **Federal Register** on June 2, 2004 (69 FR 31248), because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to respond to them individually. In this final rule, we address the concerns of the commenters that are related to the proposed rule and the notice with comment period published on July 2, 2003 (68 FR 39764). Summaries of the major concerns and our responses to these comments are set forth below.

Refinements

*Comment:* There were several comments regarding refinement of the many different features of the HH PPS outside of the payment update such as outliers, supplies, PEPs, SCICs, LUPAs, and OASIS that make up the HH PPS, as well as other related issues such as dual-eligibles, long-term care patients, and telemedicine.

*Response:* These comments were generally outside the scope of the proposed payment updates. Our ongoing research agenda on HH PPS refinements encompasses review of case mix adjustment and other payment adjustment provisions introduced as part of the PPS system. Our continuing work also includes review of overall system performance to the extent data permit analysis of this topic.

We intend to address the aspects of the HH PPS that are subject to administrative revision when we initiate a refinement regulation. We believe it is prudent to avoid piecemeal revisions addressing one provision or another in isolation. Also, we believe it is common with new payment systems for providers to go through a period of adaptation. The adaptation process influences the data we use to study refinements, and those data lag by a year or more. We believe it is appropriate to base recommendations on data that reflect the end point of the provider adaptation process. Our study results will be more effective and provide a better basis for policy proposals when the data used in the studies reflect the end point of the adaptation period. Furthermore, we believe the best approach would be one that allows for analyzing interrelationships among payment features on the system in general. Moreover, it is more efficient to make numerous changes at the same time. Past experience with changes in systems and data collection for providers has shown that providers believe it is more burdensome when frequent changes are made to a payment system.

*Comment:* There were a few comments requesting that ostomy supplies be exempt from the consolidated billing requirements because of their high cost.

*Response:* The Medicare statute governing the home health PPS is specific to the type of items and services bundled to the HHA. Section 1842(b)(6)(F) of the Act requires that all home health items and services, including medical supplies, furnished to a beneficiary under a plan of care are subject to consolidated billing. For example, if a patient is admitted for a condition that is related to a chronic condition which requires medical supplies (such as ostomy supplies), the HHA is required to provide those medical supplies while the patient is under a home health plan of care during an episode of care. We also note that costs of medical supplies are included in the HH PPS payment rate as the statute required that all services, including medical supplies, that would have been covered under the cost-based reimbursement system be bundled and paid under HH PPS.

*Comment:* There were a few comments regarding supplies not covered under Part B, and a question was posed whether the HHAs are responsible to bundle these supplies while a beneficiary is under a home health plan of care.

*Response:* Section 1895(b)(1) of the Act specifies that under the HH PPS system, all services covered and paid for on a reasonable cost basis under the Medicare home health benefit as of the date of enactment of this section, including medical supplies, shall be paid for on the basis of a prospective payment amount determined under that subsection and applicable to the services involved. In the past, HH PPS home health agencies provided, and were reimbursed for, non-routine medical supplies for which Part B codes existed as well as for non-routine medical supplies for which Part B codes did not exist. The costs of those supplies are included in the HH PPS rates, as those costs were built into the visit rates before the implementation of HH PPS and were part of the calculation of the base HH PPS rates. The implementation of the HH PPS did not change what home health agencies are required to provide to their beneficiaries under a plan of care.

*Comment:* Some commenters requested clarification of the terms ''significant change in condition'' and ''significant change in plan of care.''

*Response:* As stated in 42 CFR 484.205(a)(3), a significant change in condition (SCIC) payment adjustment due to the intervening event is defined as a significant change in the patient's condition during an existing 60-day episode. The SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care.

*Comment:* One commenter asserted that the requirement to claim an SCIC with an improvement in an expected outcome of care would lead to a system that could result in having a lower payment despite a greater resource use.

*Response:* As stated in our Pub. 100–2; Medicare Benefit Policy Manual, Chapter 7, ''Home Health Services'' 10.9 ''Significant Change in Condition (SCIC) Payment Adjustment'' the agency is not constrained to bill for a SCIC for a higher home health resource group (HHRG) if the net effect is a lower payment for the episode than if the SCIC had not occurred. Because the intent of the SCIC was not to lower the total episode payment when patients actually required more intensive services, the HHA is not forced to bill for an SCIC in this circumstance. However, where the SCIC reflects a lower HHRG due to unanticipated improvement in patient condition, the SCIC must be billed. This policy is restated in our Pub. 100–4; Medicare Claims Processing Manual, Chapter 10, ''Home Health Agency Billing'', 10.1.20 ''Adjustments of Episode Payment Significant Change in Condition (SCIC).''

*Comment:* Commenters supported the adjustment of the outlier policy and encouraged us to regularly/annually monitor outlier expenditures so that further adjustments can be made promptly should the full amount of outlier funds not be used.

*Response:* We plan to continue to monitor the outlier expenditures on a yearly basis and to make adjustments as necessary.

*Comment:* A commenter requested that we conduct a thorough review of the PPS over the next year to improve its validity as outlier episodes were ''underpaid'' in previous years. The commenter also recommended that we increase the CY 2005 national 60-day episode rate and per visit amounts by 2 percent in light of the ''underpayments'' of outliers.

*Response:* We will continue to closely monitor the outlier expenditures. In accordance with section 1895(b)(5) of the Act, we have set thresholds and ratios in the outlier calculations so that outlier payments for the year are projected to be no more than 5 percent of the total payments projected or estimated for the HH PPS. In doing so, we use the best Medicare data available.

Many of the factors used to set prospective payment amounts for a given year are based on estimates. These factors include not only the outlier threshold, but also the market basket rate of increases used to establish the update factor to the HH PPS rates. We do not believe that the Congress intended that the standardized amounts for a given year should be adjusted (upward or downward) to reflect any difference between projected and actual outlier payments for a past year.

Under the policy we have maintained since the inception of the HH PPS, we do not make retroactive adjustments to reconcile differences between the percentage of outlier payments projected before a given year and the ''actual'' outlier payments for that year.

Definition of Non-Metropolitan Statistical Area (MSA)/Wage Index

*Comment:* In general, commenters appreciated that a change to the new CBSAs will not be undertaken for HH payments this year. Some commenters went so far as to express their opposition to ever adopting the CBSAs for HH PPS. There were also requests that if we were to implement CBSAs for HH PPS, we phase in the CBSAs in a similar fashion as is being done in the hospital setting. One commenter recommended using a blended wage index value, stating that HHAs in a given CBSA would receive the higher of either the wage index value based on data from hospitals in the new CBSA or the blended wage index value based on data from all hospitals in counties formerly included in the NECMA but now in separate CBSAs. The commenter believes that using such a blended wage index would also smooth out anomalies associated with an HHA serving patients in two or more different CBSAs. Commenters further urged us to postpone any change until the proposed IPPS wage index values could be evaluated.

*Response:* We will review and analyze the comments to the proposed rule titled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and FY 2005 Rates'' (69 FR 28195) published on May 18, 2004 in which the new CBSAs are used before we consider adopting any new labor market definitions for HH PPS. In addition, we are currently analyzing the estimated impact that a move to CBSAs under the HH PPS would have on the home health industry. We plan to conduct a full study and consider the estimated impact that CBSAs would have on the home health industry before any revisions to the wage index are made.

*Comment:* Commenters wished to see geographic area reclassification and wage index floors (such as those provided to hospitals) become available to HHAs. Commenters generally stated that the HHAs should be allowed to use the reclassified version of the wage index.

*Response:* We continue to believe that the most recent available pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute.

*Comment:* Commenters supported using the most recent hospital wage index available for HH PPS in CY 2005.

*Response:* We appreciate the commenters' support. As explained in the June 2, 2004 proposed rule, we have always used the most recent hospital wage index available in determining the HH PPS payment rates. However, as noted previously, the HH PPS update cycle was revised from that of a fiscal year update to a calendar year update, resulting in the most recent hospital wage index available at the time of publication being the current year's hospital wage index.

*Comment:* One commenter urged us to use the 2004 pre-floor and pre-reclassified wage index as opposed to using the current year's hospital wage index data to provide a more equitable wage index transition and avoid abrupt changes due to skipping an update year.

*Response:* As noted in the previous comment, we have always used the most recent available hospital wage index data in determining the HH PPS update. We continue to believe using the most recent available wage index better reflects current wages and salaries.

*Comment:* Commenters supported creating a joint HH industry/CMS technical advisory group to explore the accuracy of the current wage index as well as options for a refined wage index that more accurately reflects the true wage costs experienced by the HH industry.

*Response:* We appreciate the comment, however, we do not believe such a group is necessary. We have always received input from the industry on various aspects of our Medicare payment systems, and we anticipate this practice will continue into the future. More recently, the ''open-door'' forums, initiated by CMS, provide the public with an opportunity to provide input and comment on the wage index used in the HH PPS.

*Comment:* Commenters wished to see a comprehensive impact analysis before instituting wage index changes. They believe that no changes in the wage index should be implemented without adequate (one full year's) notice.

*Response:* To provide a more comprehensive impact analysis and one year's notice of wage index changes would necessitate that we not use the most recent available hospital wage index for HH PPS. As noted previously, we have always used the most recent available pre-floor and pre-reclassified hospital wage index at the time of publication as we believe it better reflects current wages and salaries.

*Comment:* Commenters were concerned about the time to comment on the wage index that was published in the correction notice. One commenter suggested that the comment period be extended 30 days with respect to the wage index.

*Response:* We believe commenters were given adequate notice to timely comment on the wage index. As stated in the proposed rule, the proposed wage indices were not final. The final wage index values are in the addendum to this final rule. The inadvertent inclusion of the wrong wage index was a technical error. We published the correct wage index on our Web site and as soon as possible thereafter in the **Federal Register**, once the inadvertent technical error was noted.

*Comment:* Commenters are concerned about treatment of wage index values in Connecticut, and other parts of New England, and requested a reconsideration of the proposed decreases to the wage indices. The commenters were specifically concerned that we unilaterally changed the designation of three hospitals in Litchfield County from their placement in the Hartford MSA to the rural region, thereby lowering both regions' wage indices. Commenters requested that this be reversed and those three hospitals be designated to the Hartford MSA as per previous longstanding CMS policy. One commenter also suggested that the re-designation of hospitals in Hartford was done as part of our proposal for revised MSA definitions. If so, then this is in conflict with our stated intent not to apply expanded MSA definitions for HHAs in CY 2005.

*Response:* We did not intend to implement any of the CBSA designations for CY 2005 in the HH PPS. Upon thorough review of the commenter's concern, we have determined that only Sharon Hospital of Litchfield County, Connecticut was inadvertently designated to the rural Connecticut area in our July 30, 2004 correction notice (69 FR 45640). In this final rule, we are publishing an updated and corrected pre-floor and pre-reclassified hospital wage index that reflects Sharon Hospital's correct designation to the Hartford MSA (3283). In doing so, rural Connecticut's wage index value changes from 1.1586 in the proposed CY 2005 wage index published in the above correction notice, to 1.1917 in the final wage index published in this final rule. Conversely, the Hartford MSA wage index value changes from a value of 1.1068 to 1.1055. In addition, our review determined that there were technical errors in the hospital wage index calculation process for FY 2005 that had a slight overall impact to the wage index that we published in our correction notice (69 FR 45640). These technical errors have been corrected in the wage index published in this final rule.

*Comment:* Commenters questioned how their wage index values could decrease so dramatically at a time when the wages they pay their staff have increased and their health insurance and dental insurance have increased. Commenters further requested to see our assessment of the impact of those declines, as agencies are already having trouble covering costs of serving isolated elders, as well as information as to how we arrived at the wage data used to compute the proposed wage index values.

*Response:* As we noted in the final HH PPS rule on July 3, 2000 (65 FR 41165), we do not have a home health specific wage index because of industry concerns with the methodology used to develop a HH specific wage index and the lack of applicable home health specific data. Accordingly, we use the hospital wage index as we believe it results in the most appropriate adjustment to the labor portion of the cost and best reflects the current wages and salaries.

For the convenience of the public, we have recently published in the HH PPS rate updates, a comparison of wage index values from the current year to the upcoming year, as an illustration of the changes in the wage index from year to year. We are publishing a comparison table as part of this rule in Addendum C.

For specifics regarding the information on the hospital wage data used in computing the hospital wage index, please refer to the August 11, 2004 IPPS final rule (69 FR 48915).

*Comment:* Commenters stated that a ''hold harmless'' provision should be available to HHAs to limit a wage index reduction (specifically to 2 percent from one year to the next) where there is a sudden reduction in the local wage index. Relief for providers that are negatively impacted should not come at the expense of providers that benefit from the changes.

*Response:* Although we have sometimes implemented ''hold harmless'' provisions for groups of hospitals that are negatively impacted by significant changes in the wage index calculation or geographic classification, no such changes in methodology have taken place under the HH PPS. We note that, even for hospitals, there exists no precedent for a ''hold harmless'' provision based solely on percentage decreases in wage index values.

Home Health Market Basket

*Comment:* Several commenters claimed the proposed rule had inadequate detail to evaluate the accuracy of the proposed changes. Specifically, they were unable to determine whether the market basket captures the costs of HIPAA compliance and outcome-based quality assurance activities and whether the blending of the price proxies accurately captures the growth of nursing wage costs.

*Response:* We believe the detail provided in the proposed rule was adequate for the public to meaningfully comment on the proposed changes to the market basket. The proposed rule described the methodology, provided data sources, and discussed alternatives considered for the proposed rebasing of the market basket.

As for the HIPAA compliance and quality assurance activities, the HH market basket will only reflect these costs since they impact the rate of change in prices. For example, if there are overall increases in wage levels due to staffing changes associated with HIPAA compliance and/or quality assurance activities, these price changes may be reflected in the price proxies. However, costs associated with purchasing new equipment or hiring more staff for HIPAA compliance and/or quality assurance activities will only be reflected in the base year weights when the index is rebased to reflect a year in which these costs were present.

We also believe the blending of the price proxies accurately captures the growth of nursing wage costs. We continued to use a 50/50 split of ECI for Professional Specialty & Technical Workers and Civilian Hospital Workers for both wages and benefits in order to reflect the competition between HHAs and hospitals for registered nurses, while still capturing the overall wage trends for professional and technical workers. We explained the need for this process as there is no specific wage or benefit measure for HHAs that holds skill mix constant. The increase in the Skilled Nursing & Therapist & Other Professional/Technical wages cost weight from the 1993-based (45.758 of the total wage cost category or 29.389 percent of the total index) to the proposed 2000-based HH market basket (53.816 percent of the wage cost category or 35.393 percent of the total index) is a reflection of the increase in skilled nursing, therapist, and other professional/technical wage costs relative to other market basket costs. The blended home health wage proxy, composed of ECIs which keep the skill mix constant, increased 35 percent from 1995 through 2003, while the Average Hourly Earnings for Nonsupervisory Home Health Workers grew by 24 percent.

The market basket is an important component of the PPS system, but it is also important to review total provider reimbursement and costs when assessing the adequacy of Medicare payments. In April 2004, MedPAC reported that the Medicare margin for home health providers was 16.8 percent in 2004, and recommended that no update be provided for 2005. The MMA, however, requires the market basket update minus 0.8 percent, which results in a 2.3 percent increase for 2005, which this final rule implements.

*Comment:* Several commenters strongly supported the rebasing and revising of the home health market basket and hoped that CMS would be capable of rebasing more frequently.

*Response:* Section 404 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) mandated that we study and report on the possibility of rebasing the Inpatient Prospective Payment System hospital market basket more often than once every 5 years. After our report is completed, we plan to study the rebasing frequency for our other market baskets, such as the Skilled Nursing Facility and the Home Health market basket. We plan to use that information to determine an appropriate frequency for rebasing the home health market basket. It has always been our policy to rebase an index when appropriate. We will continue to monitor the home health market basket index to ensure it continues to adequately reflect the price of goods and services purchased by HHAs in providing an efficient level of home health care services.

*Comment:* Some commenters questioned whether the home health market basket reflects current market forces. Specifically, they questioned whether the market basket captured the increase in worker's compensation, transportation, and professional liability insurance costs.

*Response:* While all cost categories are not identified specifically and separately in the market basket, they are included in the weights, and the proxies attempt to reflect price changes associated with them. The price proxies are forecasted based on current price trends, thus reflecting current market forces. For the CY 2005 update, the forecasted price proxies include historical percent changes through 2004, 2nd quarter.

*Comment:* One commenter suggested that we convene a technical panel of industry and government experts in order to develop a more representative market basket. In addition, a few suggested that our use of the Medicare cost reports for home health agencies yields a flawed market basket and suggested combining cost report data and inputs from industry sources to develop the home health market basket.

*Response:* In the past we have worked with industry, academic, government, and private sector experts on the development and update of the market basket, and we will continue to do so when necessary. When we rebase or revise the market, we generally provide a 60-day comment period for the rule which gives an opportunity for public input as do ''open-door'' forums. We have always considered input from industry sources and evaluated them against other data sources based on our requirements of reliability, relevance, timeliness, and public availability.

The Medicare cost reports provide actual cost share data for home health agencies serving Medicare patients. We believe that home health agencies understand the value we place upon accurate cost report data, and have provided us with reliable cost data, which aid our rebasing and revising of the home health market basket.

*Comment:* Some commenters questioned if the market basket increase (in CY 2005 3.1 percent) is supposed to cover the costs of an efficient home health agency, then why is the HH PPS update equal to the home health market basket increase minus 0.8 percentage points.

*Response:* The HH PPS update is dictated by statute. Section 701 of the MMA mandated that the CY 2005 HH PPS update be equal to the HH market basket increase minus 0.8 percentage points. Therefore, the update factor for CY 2005 was required to be reduced. While the deduction from the market basket increase is mandated in the MMA, we believe the market basket, as revised and rebased, is a technically accurate measure for price changes that reflect the true costs to a home health agency for efficiently providing services. This methodology is consistent with the market basket methodologies for Hospital, Skilled Nursing Facility, and Physician.

*Comment:* A commenter was concerned about services such as telemonitoring/telehealth that are not included in the margin analysis. The commenter requested that the cost report be simplified to allow all costs associated with Medicare home care patients to be included in the cost report.

*Response:* The instructions to Form 1728–94 were modified in June 2001 to identify the direct and indirect costs of telemedicine services (including telemonitoring and telehealth) as a non-reimbursable cost center on the home health agency cost report to aide in trend analysis of telemedicine costs. However, as a non-reimbursable cost center these services are not a recognized visit or service under HH PPS. Specifically, in section 1895(e)(1)(B) of the Act, telecommunications services are not considered a home health visit for the purposes of eligibility or payment under this title.

Rural 5 Percent Rural Add-On

*Comment:* Commenters questioned why the 5 percent increase is only for 1 year.

*Response:* The statute is very specific as to the time frame for the rural add-on. Section 421 of the MMA requires, for home health services furnished in a rural area with respect to episodes and visits ending on or after April 1, 2004 and before April 1, 2005, an increase by 5 percent of the payment amount that otherwise would be made for these services. Therefore, the 5 percent rural add-on ends after the first quarter of CY 2005, that is, for episodes and visits ending before April 1, 2005.

General Comments

*Comment:* A commenter requested that we consider the issuance of public status reports regarding our efforts concerning the HH PPS, such as a rebasing of the HH PPS payment rates, revisions to the payment structure, and revisions to the HHRG case mix adjuster. This would provide an early opportunity for input and comment relative to the potential direction in that regard.

*Response:* We appreciate the comment. Any significant changes to the HH PPS will continue to be provided with sufficient notice to the public. In addition, our ''open door'' forum is an opportunity for the public to express concerns and have issues addressed.

IPPS-Related Comments

*Comment:* We received a small number of comments that were particular to the Inpatient Hospital PPS proposed rule of May 18, 2004 (69 FR 28196). Issues ranged from expanded wage areas that would change status due to the redefinition of rural and urban areas, to suggestions of modernizing the geographic reclassification criteria to protect providers when they are ''redistricted'' out of a high wage area, to issues regarding Critical Access Hospital status and the applicable wage index calculation.

*Response:* These comments are specific to IPPS and outside the scope of the HH PPS update.

Comments on Home Health Prospective Payment System Rate Update for FY 2004 Notice, Published on July 2, 2003 (68 FR 39764)

As noted previously, we received 6 comments on the 2004 update notice for HH PPS. A summary of those comments and our responses are noted below.

*Comment:* Commenters requested that we publish the pre-floor and pre-reclassified hospital wage index annually as part of the notice and comment rulemaking for inpatient hospital PPS. This would allow for prior public comment on the wage index applied to HHAs.

*Response:* The methodology as to how wage indicies are used in the calculation of the HH PPS payment rates has not changed since the implementation of the HH PPS. Because it is only the updating of data used to determine the wage index values between versions of a particular year's wage index file, and not the changing of methodology, we do not believe that prior public notice or a separate publication (outside the publication of the HH PPS update) is warranted. As to the specific wage index tables for the HH PPS for a given year, although it applies a rural floor and reclassifications, generally the hospital wage index files published in the IPPS rules, (which are published before the HH PPS update) would provide a good indication of the wage index used in a HH PPS update.

*Comment:* One commenter had several comments on potential legislation, including urging us to assert to Congressional leadership that HHAs need to receive the full market basket increase of 3.3 percent. The commenter also criticized the loss of the rural add-on and the threat of copayments.

*Response:* We note that recently passed legislation addresses the commenters' concerns regarding market basket updates and the rural add-on. The MMA addresses the market basket increase in section 701. Specifically, section 701(b) of the MMA states that for the last 3 calendar quarters of 2004, the unadjusted prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket minus 0.8 percentage points. For each of calendar years 2005 and 2006, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous calendar year, increased by the applicable home health market basket minus 0.8 percentage points. Regarding the rural add-on, section 421 of the MMA requires, for home health services furnished in a rural area with respect to episodes and visits ending on or after April 1, 2004 and before April 1, 2005, that we increase by 5 percent the payment amount that otherwise would be made for the services. The MMA did not include copayments for Medicare home health services.

**IV. Provisions of the Final Regulations**

This final rule incorporates the provisions of the regulations text of the proposed rule [69 FR 31248]. We have adopted the proposed changes from the above captioned proposed rule with regards to the rebasing and revising of the home health market basket, differing only in that through the use of updated data, the final CY 2005 market basket increase is 3.1 percent, as compared to 3.3 percent in the proposed rule. Consequently, we will update the national 60-day episode rate and the per-visit payment amounts per discipline for CY 2005 for LUPAs by the final determined market basket percentage of 3.1 percent minus 0.8 percentage points for an update to the HH PPS rates of 2.3 percent. In addition, we will update, by 5 percent, the 60-day episode payment amounts and the LUPA, per-visit payment amounts for services furnished in a rural area with respect to episodes and visits ending on or after April 1, 2004 and before April 1, 2005. We have also updated the fixed dollar loss (FDL) ratio, used in the determination of outlier payments, from the proposed ratio of 0.72 in the proposed rule to 0.70, using the most recent available HH PPS data. Finally, this final rule includes the most recent version of the pre-floor and pre-reclassified hospital wage index, that does not apply the CBSA policy, used by the HH PPS.

*A. Rebasing and Revising of the Home Health Market Basket*

1. Rebasing Results

Section 1895(b)(3)(B) of the Act, as amended by the MMA, requires the standard prospective payment amounts to be paid on a calendar year basis for 2004 and any subsequent year. Previous market basket updates were calculated on a fiscal year basis. Table 1 shows that the forecasted rate of growth for CY 2005, beginning January 1, 2005, for the rebased and revised home health market basket is 3.1 percent, while the forecasted rate of growth for the current 1993-based home health market basket is also 3.1 percent. This final update for CY 2005 is based on the Global Insight, Inc 2004, 3rd quarter forecast with historical data through 2004, 2nd quarter. The proposed CY 2005 update was based on a forecast with historical data through 2003, 3rd quarter. As previously mentioned, we rebase the home health market basket periodically so the cost category weights continue to reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care.

TABLE 1.—FORECASTED ANNUAL PERCENT CHANGE IN THE 1993-BASED AND 2000-BASED HOME HEALTH MARKET BASKETS

| Calendar year beginning January 1 | Home health market basket, 1993-based | Home health market basket, 2000-based | Difference (2000-based less 1993-based) |
|---|---|---|---|
| January 2005, CY 2005 | 3.1 | 3.1 | 0.0 |

Source: Global Insight, Inc, 3rd Qtr, 2004; @USMACRO/CONTROL0804 @CISSIM/TL0804.SIM.

Table 2 shows the percent changes for CY 2005 based on the 2004, 3rd quarter forecast for each cost category in the home health market basket.

TABLE 2.—CY 2005 FORECASTED ANNUAL PERCENT CHANGE FOR ALL COST CATEGORIES IN THE 2000-BASED HOME HEALTH MARKET BASKET

| Cost categories | Weight | Price proxy | Forecasted annual percent change for CY 2005 |
|---|---|---|---|
| Total | 100.000 | | 3.1 |
| Compensation | 76.775 | | 3.3 |
| Wages and Salaries | 65.766 | Home Health Occupational Wage Index | 3.0 |
| Employee Benefits | 11.009 | Home Health Occupational Benefits Index | 5.0 |
| Operations & Maintenance | 0.825 | CPI Fuel & Other Utilities | 2.8 |
| Administrative & General & Other Expenses | 16.633 | | 2.6 |
| Telephone | 0.850 | CPI Telephone Services | 0.9 |
| Postage | 0.563 | CPI Postage | 2.0 |
| Professional Fees* | 1.405 | ECI for Compensation for Professional and Technical Workers. | 3.6 |
| Other Products* | 6.419 | CPI All Items Less Food and Energy | 2.1 |
| Other Services* | 7.396 | ECI for Compensation for Service Workers | 3.1 |
| Transportation | 2.744 | CPI Private Transportation | 0.3 |
| Capital-Related | 3.023 | | 2.5 |
| Insurance | 0.275 | CPI Household Insurance | 3.3 |
| Fixed Capital | 1.777 | CPI Owner's Equivalent Rent | 3.1 |
| Movable Capital | 0.971 | PPI Machinery & Equipment | 1.0 |

*New break-out in cost structure when compared with the 1993-based home health market basket.
Source: Global Insight, Inc, 3rd Qtr, 2004; @USMACRO/CONTROL0804 @CISSIM/TL0804.SIM.

*B. CY 2005 Update to the Home Health Market Basket Index*

Section 1895(b)(3)(B) of the Act, as amended by section 701 of the MMA, requires for CY 2005 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket increase minus 0.8 percentage points. As previously noted, we are amending the regulations in § 484.225 to reflect this requirement.

**CY 2005 Adjustments**

To calculate the CY 2005 national 60-day episode rate, we multiply the CY 2004 (as of April 1, 2004) national 60-day episode rate ($2,213.37) by the applicable home health market basket update of 3.1 percent for CY 2005 minus 0.8 percentage points.

We increase the CY 2004 60-day episode payment rate by the proposed home health market basket increase (3.1 percent) minus 0.8 percentage points ($2,213.37 × 2.3 percent) to yield the updated CY 2005 national 60-day episode rate ($2,264.28) (see Table 4 below).

TABLE 4.—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE APPLICABLE HOME HEALTH MARKET BASKET CY 2005, MINUS 0.8 PERCENTAGE POINTS, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

| Total prospective payment amount per 60-day episode for CY 2004 (as of 04/01/04) | Multiply by the applicable home health market basket increase (3.1 percent) minus 0.8 percentage points | CY 2005 updated national 60-day episode rate |
|---|---|---|
| $2,213.37 | × 1.023 | $2,264.28 |

*C. National Per-Visit Amounts Used To Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations*

As discussed previously in this final rule, the policies governing the LUPAs and outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue during CY 2005. In calculating the annual update for the CY 2005 national per-visit amounts we use to pay LUPAs and to compute the imputed costs in outlier calculations, we look again at the CY 2004 (as of April 1, 2004) rates as a starting point. We then multiply those amounts by the home health market basket increase minus 0.8 percentage points for CY 2005 to yield the updated per-visit amounts for each home health discipline for CY 2005. (*See* Table 5 below.)

TABLE 5.—NATIONAL PER-VISIT AMOUNTS FOR LUPAS AND OUTLIER CALCULATIONS UPDATED BY THE APPLICABLE HOME HEALTH MARKET BASKET INCREASE FOR CY 2005, MINUS 0.8 PERCENTAGE POINTS, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

| Home health discipline type | Final per-visit amounts per 60-day episode for CY 2004 for LUPAs (as of 04/01/04) | Multiply by the applicable home health market basket (3.1 percent) minus 0.8 percentage points | Per-visit payment amount per discipline for CY 2005 for LUPAs |
|---|---|---|---|
| Home Health Aide | $43.75 | × 1.023 | $44.76 |
| Medical Social Services | 154.89 | × 1.023 | 158.45 |
| Occupational Therapy | 106.36 | × 1.023 | 108.81 |
| Physical Therapy | 105.65 | × 1.023 | 108.08 |
| Skilled Nursing | 96.63 | × 1.023 | 98.85 |
| Speech-Language Pathology | 114.80 | × 1.023 | 117.44 |

*D. Update to the Outlier Fixed Dollar Loss Ratio*

For the rule, we performed analysis of CY 2001 home health claims data. The results of that analysis reflected that outlier episodes represented approximately 3 percent of total episodes and 3 percent of total HH PPS payments. For this final rule, we have performed the same analysis on CY 2002 and CY 2003 home health claims data and have found the number of outlier episodes and payments to continue to hold at approximately 3 percent of total episodes and total HH PPS payments, respectively.

In the rule, we also performed data analysis on CY 2001 HH PPS analytic data to update the fixed dollar loss (FDL) ratio to enable the total estimated outlier payments to be a projected 5 percent of total HH PPS payments. The results of that analysis indicated that a fixed dollar loss ratio of 0.72 was consistent with the existing loss-sharing ratio of 0.80 and a projected target percentage of estimated outlier payments of 5 percent. For this final rule, we have performed the same analysis on CY 2003 HH PPS analytic data to update the fixed dollar loss ratio. The results of this analysis indicate that a fixed dollar loss ratio of 0.70 is consistent with the existing loss-sharing ratio of 0.80 and a projected target percentage of estimated outlier payments of 5 percent. Consequently, we are updating the fixed dollar loss ratio from the current ratio of 1.13 to the fixed dollar loss ratio of 0.70. Our analysis shows that reducing the fixed dollar loss ratio from 1.13 to 0.70 will allow approximately 5.9 percent of episodes to qualify for outlier payments. The estimated 5.9 percent outlier episodes are greater than the 3.0 percent of episodes that currently qualify for outlier payments.

Expressed in terms of a fixed dollar loss amount, the fixed dollar loss ratio of 0.70 implies that providers would absorb approximately $1,585 of their costs (before wage adjustment), in addition to their loss-sharing portion of the estimated cost in excess of the outlier threshold. This fixed dollar loss amount of approximately $1,585 is computed by multiplying the standard 60-day episode payment amount ($2,264.28) by the fixed dollar loss ratio (0.70). Using the current fixed dollar loss ratio (1.13), the fixed dollar loss amount would be approximately $2,558 ($2,264.28 × 1.13).

We believe that a fixed dollar loss ratio of 0.70 preserves a reasonable degree of cost sharing, while allowing a greater number of episodes to qualify for outlier payments.

The following analytical Tables 6–a through 6–d, derived from analysis of CY 2003 HH PPS claims data, characterize outlier episodes, and estimate how different types of providers and providers in different parts of the country will do under an outlier scenario that employs a fixed dollar loss ratio of 0.70 as compared to the current fixed dollar loss ratio of 1.13.

The new FDL of 0.70 will increase outlier payments to all types of home health providers in all areas of the country. Generally speaking, it has been estimated that, under a scenario where the FDL is equal to 0.70, for home health providers whose outlier payments are historically a lesser percentage of their total HH PPS payments, their outlier payments will increase at a greater rate than will outlier payments for home health providers whose outlier payments are historically of a greater percentage of their total HH PPS payments.

For example, non-profit home health agencies were estimated to receive outlier payments equal to approximately 1.9 percent of their total HH PPS payments under the current scenario where the FDL = 1.13. Under the same scenario, for-profit home health agencies were estimated to receive outlier payments equal to approximately 5.1 percent of their total HH PPS payments. While a scenario where the FDL = 0.70 increases the percentage of outlier payments to total HH PPS payments, the overall increase in outlier payments to non-profit home health agencies increases by an estimated 77.6 percent while the outlier payments for for-profit home health agencies increase by approximately 33.8 percent.

Similarly, while outlier payments to both provider-based and free-standing home health agencies will increase under a scenario where FDL = 0.70, outlier payments to provider-based home health agencies are estimated to increase by approximately 97.3 percent, while payments to free-standing home health agencies are estimated to increase by approximately 41 percent. For areas of the county where outlier payments are estimated to be of a lesser percentage to their total HH PPS payments, their overall percentage increase in outlier payments is estimated to be greater than for those areas of the country where outlier payments have been estimated to be of a greater percentage of their total HH PPS payments. Finally, while both urban and rural providers will benefit from increased outlier payments under the FDL of 0.70 scenario, rural providers will see their outlier payments increase by an estimated 81.5 percent, while urban providers will see an estimated increase of approximately 43.2 percent.

TABLE 6–A.—COMPARISON OF ESTIMATED OUTLIER PAYMENTS AS A PERCENTAGE OF TOTAL HH PPS PAYMENTS UNDER THE CURRENT FDL = 1.13 TO ESTIMATED OUTLIER PAYMENTS AS PERCENTAGE OF TOTAL HH PPS UNDER THE FDL = 0.70 BY TYPE OF CONTROL

| Type of control | Percentage of outlier payments to total HH PPS payments | | Percent change in outlier payments from FDL = 1.13 to FDL = 0.70 |
|---|---|---|---|
| | FDL = 1.13 | FDL = 0.70 | |
| Non-Profit | 1.9 | 3.4 | 77.6 |
| Profit | 5.1 | 6.7 | 33.8 |
| Government | 2.1 | 3.1 | 77.5 |

TABLE 6–B.—COMPARISON OF ESTIMATED OUTLIER PAYMENTS AS A PERCENTAGE OF TOTAL HH PPS PAYMENTS UNDER THE CURRENT FDL = 1.13 TO ESTIMATED OUTLIER PAYMENTS AS PERCENTAGE OF TOTAL HH PPS UNDER THE FDL = 0.70 BY TYPE OF FACILITY

| Type of control | Percentage of outlier payments to total HH PPS payments | | Percent change in outlier payments from FDL = 1.13 to FDL = 0.70 |
|---|---|---|---|
| | FDL = 1.13 | FDL = 0.70 | |
| Free Standing | 4.1 | 5.7 | 41.0 |
| Provider Based | 1.4 | 2.7 | 97.3 |

TABLE 6–C.—COMPARISON OF ESTIMATED OUTLIER PAYMENTS AS A PERCENTAGE OF TOTAL HH PPS PAYMENTS UNDER THE CURRENT FDL = 1.13 TO ESTIMATED OUTLIER PAYMENTS AS PERCENTAGE OF TOTAL HH PPS UNDER THE FDL = 0.70 BY REGION

| Region | Percentage of outlier payments to total HH PPS payments | | Percent change in outlier payments from FDL = 1.13 to FDL = 0.70 |
|---|---|---|---|
| | FDL = 1.13 | FDL = 0.70 | |
| Region I: Boston | 2.8 | 4.9 | 76.6 |
| Region II: New York | 3.3 | 5.4 | 66.6 |
| Region III: Philadelphia | 1.0 | 2.0 | 97.5 |
| Region IV: Atlanta | 3.5 | 4.9 | 43.6 |
| Region V: Chicago | 1.1 | 2.1 | 96.9 |
| Region VI: Dallas | 3.7 | 5.2 | 41.5 |
| Region VII: Kansas City | 1.2 | 2.3 | 102.5 |
| Region VIII: Denver | 3.5 | 5.1 | 47.6 |
| Region IX: San Francisco | 9.9 | 12.0 | 24.6 |
| Region X: Seattle | 0.5 | 1.3 | 151.7 |

TABLE 6–D.—COMPARISON OF ESTIMATED OUTLIER PAYMENTS AS A PERCENTAGE OF TOTAL HH PPS PAYMENTS UNDER THE CURRENT FDL = 1.13 TO ESTIMATED OUTLIER PAYMENTS AS PERCENTAGE OF TOTAL HH PPS UNDER THE FDL = 0.70 BY URBAN/RURAL

| Urban/rural | Percentage of outlier payments to total HH PPS payments | | Percent change in outlier payments from FDL = 1.13 to FDL = 0.70 |
|---|---|---|---|
| | FDL = 1.13 | FDL = 0.70 | |
| Urban | 4.0 | 5.6 | 43.2 |
| Rural | 1.4 | 2.5 | 81.5 |

*E. Rural Add-On as Required by MMA*

As discussed in the proposed rule, section 421 of the MMA requires, for home health services furnished in a rural area with respect to episodes and visits ending on or after April 1, 2004 and before April 1, 2005, that we increase by 5 percent the payment amount that otherwise would be made for the services.

The CY 2005 5 percent rural add-on to the 60-day episode standardized payment and the per-visit LUPA payments, as required by section 421 of the MMA, is noted in tables 7 and 8 below.

TABLE 7.—CY 2005 RURAL ADD-ON TO 60-DAY EPISODE PAYMENT AMOUNTS ENDING ON OR AFTER APRIL 1, 2004 AND BEFORE APRIL 1, 2005 FOR BENEFICIARIES WHO RESIDE IN A NON-MSA AREA BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

| Total prospective payment amount per 60-day episode for CY 2005 | 5 percent rural add-on | CY 2005 final payment amount per 60-day episode ending before April 1, 2005 for a beneficiary who resides in a Non-MSA area |
|---|---|---|
| $2,264.28 | × 1.05 | $2,377.49 |

TABLE 8.—CY 2005 ADD-ON TO LUPA PER-VISIT AMOUNTS FOR VISITS ENDING ON OR AFTER APRIL 1, 2004 AND BEFORE APRIL 1, 2005, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE OF THE BENEFICIARY WHO RESIDES IN A NON-MSA AREA OR PAYMENT APPLICABLE ADJUSTMENT

| Home health discipline type | Per-visit payment amounts per 60-day episode for CY 2005 for LUPAs | 5 percent rural add-on | CY 2005 per-visit payment amounts per 60-day episode ending before April 1, 2005 for LUPAs for a beneficiary who resides in a non-MSA area |
|---|---|---|---|
| Home Health Aide | $44.76 | × 1.05 | $47.00 |
| Medical Social Services | 158.45 | × 1.05 | 166.37 |
| Occupational Therapy | 108.81 | × 1.05 | 114.25 |
| Physical Therapy | 108.08 | × 1.05 | 113.48 |
| Skilled Nursing | 98.85 | × 1.05 | 103.79 |
| Speech-Language Pathology | 117.44 | × 1.05 | 123.31 |

*F. Hospital Wage Index*

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under HH PPS to account for area wage differences. We have consistently used the most recent pre-floor and pre-reclassified hospital wage index available in determining HH PPS updates.

In our June 2, 2004 proposed rule (69 FR 31260), we proposed to continue to use the most recent pre-floor and pre-reclassified hospital wage index available at the time of the final rule. At the time of publication of the proposed rule, only preliminary versions of the wage index used by HH PPS were available. We indicated in the proposed rule that we would incorporate updated wage data for the wage index to be used in the final rule for the CY 2005 HH PPS update. Subsequent to the proposed rule, we published a correction notice on July 30, 2004 (69 FR 45640) in which we indicated that in our publishing of the proposed rule, we inadvertently published the 2004 pre-floor and pre-reclassified wage index tables instead of the intended 2005 pre-floor and pre-reclassified wage index tables. As part of that correction notice, we published the appropriate 2005 pre-floor and pre-reclassified wage index tables.

Since the publication of the correction notice, we have determined that there exists some labeling and other technical errors in the proposed wage index.

We note a labeling error in the wage index tables used in the HH PPS. That labeling error is the listing of Stanly County, NC as one of the areas under MSA 1520 when, in fact, we consider Stanly County, NC to be a rural area in North Carolina. Stanly County wage data have always been correctly treated as rural in the actual creation of the home health wage index values, and it has only been the listing of Stanly County under MSA 1520 that was in error. Consequently, the wage index table in this final rule correctly removes Stanly County from the list of areas that fall under the MSA 1520 wage index. As this is strictly a labeling correction that does not affect the actual computation of the wage index values, home health providers in Stanly County, NC will continue to fall under, and use, the wage index for rural North Carolina.

In addition, we have determined that Sharon Hospital of Litchfield County, Connecticut was inadvertently designated to the rural Connecticut area in our July 30, 2004 correction notice (69 FR 45640). Consequently, the updated CY 2005 pre-floor and pre-reclassified hospital wage index published in this final rule correctly designates Sharon Hospital to the

Hartford MSA (3283). In doing so, rural Connecticut's wage index value increases from 1.1586 in the proposed CY 2005 wage index to 1.1917 in the final CY 2005 wage index published in this final rule. Conversely, the Hartford MSA wage index value changes from a value of 1.1068 to 1.1055. In addition, our review determined that there were technical errors in the hospital wage index calculation process for FY 2005 that had a slight overall impact to the wage index that we published in our correction notice (69 FR 45640). These technical errors have been corrected in the wage index published in this final rule.

See Addenda A and B of this final rule, respectively, for the rural and urban hospital wage indexes. Furthermore, we have added an Addendum C that shows a side-by-side comparison of the FY 2003 pre-floor and pre-reclassified hospital wage index and the CY 2005 pre-floor and pre-reclassified hospital wage index, that does not apply the CBSA policy, for CY 2005 HH PPS.

## V. Collection of Information Requirements

This document does not impose information collection and record-keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## VI. Regulatory Impact Analysis

### *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 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) 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). The update set forth in this final rule would apply to Medicare payments under HH PPS in CY 2005. Accordingly, the following analysis describes the impact in CY 2005 only. We estimate that there will be an additional $250 million in CY 2005 expenditures attributable to the CY 2005 market basket (3.1 percent), minus 0.8 percentage points, an estimated increase of 2.3 percent.

Section 421 of the MMA provides for a 5 percent increase in home health payments to rural providers for episodes and visits ending after April 1, 2004 and before April 1, 2005. This increase is not subject to budget neutrality. Consequently, this increase in payments to rural providers will result in an estimated increase in expenditures of $50 million in CY 2004 and $60 million in CY 2005.

Section 701 of the MMA includes a provision that changes the update cycle for HH PPS, and thus the home health market basket update, from a fiscal year basis to that of a calendar year basis in 2004. This results in a projected reduction in expenditures of approximately $90 million in FY 2005.

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 or less annually (for details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of $11.5 million or less in 1 year. Individuals and States are not included in the definition of a small entity. As stated above, this final rule updates all of the HHAs for CY 2005 as required by statute. This rule will have a significant positive effect upon small entities.

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. This analysis must conform to the provisions of section 603 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 of a metropolitan statistical area (MSA) and has fewer than 100 beds. We have determined that this final rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

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 expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We believe that this final rule would not mandate expenditures in that amount.

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 State law, or otherwise has Federalism implications. We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that this final rule would not have substantial direct effects on the rights, roles, and responsibilities of States.

### *B. Anticipated Effects*

In accordance with the requirements of section 1895(b)(3) of the Act, we publish an update for each subsequent fiscal year that will provide an update to the payment rates. Section 1895(b)(3)(B) of the Act, as amended by section 701 of the MMA, requires us, for CY 2005, to increase the prospective payment amounts by the applicable home health market basket increase minus 0.8 percentage points. We estimate that with a home health market basket of 3.1 percent minus 0.8 percentage points, the increase for CY 2005 is 2.3 percent.

#### 1. Effects on the Medicare Program

This final rule provides a percentage update to all Medicare HHAs. Therefore, we have not furnished any impact tables. We increased the payment to each Medicare HHA equally by the home health market basket update for CY 2005, minus 0.8 percentage points, as required by statute. There is no differential impact among provider types. The impact is in the aggregate. We can show the impact that the CY 2005 wage index would have on providers. Addendum C shows a side-by-side comparison of the FY 2003 pre-floor and pre-reclassified hospital wage index and the CY 2005 pre-floor and pre-reclassified hospital wage index, that does not apply the CBSA policy, for the CY 2005 HH PPS update final rule. We estimate that there would be an additional $250 million in CY 2005 expenditures attributable to the CY 2005 market basket (3.1 percent), minus 0.8 percentage points, resulting in a 2.3 percent increase. Thus, the anticipated expenditures outlined in this final rule would exceed the $100 million annual threshold for a major rule as defined in Title 5, U.S.C., section 804(2).

The applicable home health market basket (minus 0.8 percentage points) increase of 2.3 percent for CY 2005 applies to all Medicare-participating HHAs. We do not believe there is a differential impact due to the aggregate nature of the update.

TABLE 9

| CY 2005 update to Home Health PPS rates required by the Act | Additional CY 2005 Medicare Home Health estimated expenditures due to annual update required by law |
|---|---|
| Section 1895(b)(3)(B) of the Act requires HH PPS rates increased by applicable home health market basket increase (3.1 percent) minus 0.8 percentage points, yielding 2.3 percent | $250 Million. |

Source: President's FY 2004 Budget.

2. Effects on Providers

We believe that this rule would have a positive effect on providers of Medicare home health services by increasing their rate of Medicare payments. We do not anticipate specific effects on other providers. This final rule reflects the statutorily required annual update to the HH PPS rates. We do not believe there is a differential impact due to the consistent and aggregate nature of the update.

*C. Alternatives Considered*

This final rule reflects an annual update to the HH PPS rates as required by statute. We believe that the statute provides no latitude for alternatives other than the approach set forth in this final rule reflecting the CY 2005 annual update to the HH PPS rates. Other than the positive effect of the market basket increase, this final rule would not have a significant economic impact nor would it impose an additional burden on small entities. When a regulation or notice imposes additional burden on small entities, we are required under the RFA to examine alternatives for reducing burden.

This final rule rebases and revises the home health market basket by moving the base year from FY 1993 to FY 2000 to reflect the latest available, thorough data on the structure of HHA costs. We periodically rebase and revise market baskets for multiple types of health care providers, generally on a 5-year cycle. We continue to believe that by rebasing and revising the home health market basket periodically, cost category weights will better reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care. The alternative to not rebase and revise the market basket would be to delay the inevitable task of rebasing and revising the home health market basket to some later date. For this final rule, the forecasted rate of growth for CY 2005 for both the rebased and revised home health market basket and the current 1993-based home health market basket is 3.1 percent (see Table 1 of this rule). Future updates will be better served by using a more up-to-date cost structure, as is accomplished in the revised and rebased home health market basket.

Section 1895(b)(5) of the Act states that the total amount of payments for outliers, under HH PPS, may not exceed 5 percent of the total payments projected or estimated to be made for a given fiscal year or year. As discussed in section IV, ''Provisions of the Final Regulations'', we are reducing the fixed dollar loss ratio used in the formula to determine outlier cases in HH PPS, from that of 1.13 to 0.70. Analysis indicates that a fixed dollar loss ratio of 0.70 is consistent with the existing loss-sharing ratio of 0.80 and our target percentage of estimated outlier payments of 5 percent of total home health payments. Other alternatives considered in the updating of the formula for determining outlier cases included updating/changing the loss-sharing ratio from that of 0.80 as well as changing the outlier payment target of to less than 5 percent of total home health payments. We believe that a value of 0.80 for the loss-sharing ratio is appropriate in that it preserves incentives for agencies to provide care efficiently for outlier cases. Similarly, we continue to believe that the total outlier payment target of 5 percent of total home health payments appropriately targets the most costly cases under HH PPS.

*D. Conclusion*

We have examined the economic impact of this final rule on small entities and have determined that the economic impact is positive, significant, and that all HHAs would be affected. To the extent that small rural hospitals are affiliated with HHAs, the impact on these facilities would also be positive. Finally, we have determined that the economic effects described above are largely the result of the specific statutory provisions, which this final rule serves to announce.

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

**List of Subjects in 42 CFR Part 484**

Health facilities, Health professions, Medicare, Reporting and record-keeping requirements.

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

## PART 484—HOME HEALTH SERVICES

■ 1. The authority citation for part 484 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

■ 2. Section 484.225 is amended as follow:

■ A. Paragraph (d) is redesignated as paragraph (g) and is revised.
■ B. New paragraph (d) is added.
■ C. New paragraph (e) is added.
■ D. New paragraph (f) is added.

The revisions and additions read as follows:

**§ 484.225 Annual update of the unadjusted national prospective 60-day episode payment rate.**

* * * * *

(d) For the last calendar quarter of 2003 and the first calendar quarter of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket index amount.

(e) For the last the 3 calendar quarters of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket minus 0.8 percentage points.

(f) For each calendar year of 2005 and 2006, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous calendar year, increased by the applicable home health market basket minus 0.8 percentage points.

(g) For 2007 and subsequent calendar years, the unadjusted national rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 14, 2004.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: October 7, 2004.

**Tommy G. Thompson,**

*Secretary.*

**Note:** The following addenda will not be published in the Code of Federal Regulations.

ADDENDUM A.—WAGE INDEX FOR RURAL AREAS-APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

[CY 2005]

| MSA name | Wage index |
|---|---|
| Alabama | 0.7637 |
| Alaska | 1.1637 |
| Arizona | 0.9140 |
| Arkansas | 0.7704 |
| California | 1.0297 |
| Colorado | 0.9368 |
| Connecticut | 1.1917 |
| Delaware | 0.9504 |
| Florida | 0.8789 |
| Georgia | 0.8247 |
| Guam | 0.9611 |
| Hawaii | 1.0522 |
| Idaho | 0.8826 |
| Illinois | 0.8341 |
| Indiana | 0.8736 |
| Iowa | 0.8550 |
| Kansas | 0.8088 |
| Kentucky | 0.7844 |
| Louisiana | 0.7291 |
| Maine | 0.9039 |
| Maryland | 0.9179 |
| Massachusetts | 1.0217 |
| Michigan | 0.8741 |
| Minnesota | 0.9339 |
| Mississippi | 0.7583 |
| Missouri | 0.7829 |
| Montana | 0.8701 |
| Nebraska | 0.9035 |
| Nevada | 0.9833 |
| New Hampshire | 0.9940 |
| New Jersey [1] | ............ |
| New Mexico | 0.8529 |
| New York | 0.8403 |
| North Carolina | 0.8501 |
| North Dakota | 0.7743 |
| Ohio | 0.8760 |
| Oklahoma | 0.7537 |
| Oregon | 1.0050 |
| Pennsylvania | 0.8348 |
| Puerto Rico | 0.4047 |
| Rhode Island [1] | ............ |
| South Carolina | 0.8640 |
| South Dakota | 0.8393 |
| Tennessee | 0.7876 |
| Texas | 0.7910 |
| Utah | 0.8843 |
| Vermont | 0.9375 |
| Virginia | 0.8480 |
| Virgin Islands | 0.7457 |
| Washington | 1.0072 |
| West Virginia | 0.8084 |
| Wisconsin | 0.9498 |
| Wyoming | 0.9182 |

[1] All counties within the State are classified urban.

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| 0040 | Abilene, TX | 0.8009 |
| | Taylor, TX | |
| 0060 | Aguadilla, PR | 0.4294 |
| | Aguada, PR | |
| | Aguadilla, PR | |
| | Moca, PR | |
| 0080 | Akron, OH | 0.9055 |
| | Portage, OH | |
| | Summit, OH | |
| 0120 | Albany, GA | 1.1266 |
| | Dougherty, GA | |
| | Lee, GA | |
| 0160 | Albany-Schenectady-Troy, NY | 0.8570 |
| | Albany, NY | |
| | Montgomery, NY | |
| | Rensselaer, NY | |
| | Saratoga, NY | |
| | Schenectady, NY | |
| | Schoharie, NY | |
| 0200 | Albuquerque, NM | 1.0485 |
| | Bernalillo, NM | |
| | Sandoval, NM | |
| | Valencia, NM | |
| 0220 | Alexandria, LA | 0.8171 |
| | Rapides, LA | |
| 0240 | Allentown-Bethlehem-Easton, PA | 0.9536 |
| | Carbon, PA | |
| | Lehigh, PA | |
| | Northampton, PA | |
| 0280 | Altoona, PA | 0.8462 |
| | Blair, PA | |
| 0320 | Amarillo, TX | 0.9178 |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Potter, TX | |
| | Randall, TX | |
| 0380 | Anchorage, AK | 1.2109 |
| | Anchorage, AK | |
| 0440 | Ann Arbor, MI | 1.0817 |
| | Lenawee, MI | |
| | Livingston, MI | |
| | Washtenaw, MI | |
| 0450 | Anniston,AL | 0.7881 |
| | Calhoun, AL | |
| 0460 | Appleton-Oshkosh-Neenah, WI | 0.9115 |
| | Calumet, WI | |
| | Outagamie, WI | |
| | Winnebago, WI | |
| 0470 | Arecibo, PR | 0.3757 |
| | Arecibo, PR | |
| | Camuy, PR | |
| | Hatillo, PR | |
| 0480 | Asheville, NC | 0.9502 |
| | Buncombe, NC | |
| | Madison, NC | |
| 0500 | Athens, GA | 1.0203 |
| | Clarke, GA | |
| | Madison, GA | |
| | Oconee, GA | |
| 0520 | Atlanta, GA | 0.9971 |
| | Barrow, GA | |
| | Bartow, GA | |
| | Carroll, GA | |
| | Cherokee, GA | |
| | Clayton, GA | |
| | Cobb, GA | |
| | Coweta, GA | |
| | De Kalb, GA | |
| | Douglas, GA | |
| | Fayette, GA | |
| | Forsyth, GA | |
| | Fulton, GA | |
| | Gwinnett, GA | |
| | Henry, GA | |
| | Newton, GA | |
| | Paulding, GA | |
| | Pickens, GA | |
| | Rockdale, GA | |
| | Spalding, GA | |
| | Walton, GA | |
| 0560 | Atlantic City-Cape May, NJ | 1.0907 |
| | Atlantic City, NJ | |
| | Cape May, NJ | |
| 0580 | Auburn-Opelika, AL | 0.8215 |
| | Lee, AL | |
| 0600 | Augusta-Aiken, GA-SC | 0.9208 |
| | Columbia, GA | |
| | McDuffie, GA | |
| | Richmond, GA | |
| | Aiken, SC | |
| | Edgefield, SC | |
| 0640 | Austin-San Marcos, TX | 0.9596 |
| | Bastrop, TX | |
| | Caldwell, TX | |
| | Hays, TX | |
| | Travis, TX | |
| | Williamson, TX | |
| 0680 | Bakersfield, CA | 1.0036 |
| | Kern, CA | |
| 0720 | Baltimore, MD | 0.9908 |
| | Anne Arundel, MD | |
| | Baltimore, MD | |
| | Baltimore City, MD | |
| | Carroll, MD | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Harford, MD | |
| | Howard, MD | |
| | Queen Annes, MD | |
| 0733 | Bangor, ME | 0.9955 |
| | Penobscot, ME | |
| 0743 | Barnstable-Yarmouth, MA | 1.2335 |
| | Barnstable, MA | |
| 0760 | Baton Rouge, LA | 0.8354 |
| | Ascension, LA | |
| | East Baton Rouge | |
| | Livingston, LA | |
| | West Baton Rouge, LA | |
| 0840 | Beaumont-Port Arthur, TX | 0.8616 |
| | Hardin, TX | |
| | Jefferson, TX | |
| | Orange, TX | |
| 0860 | Bellingham, WA | 1.1643 |
| | Whatcom, WA | |
| 0870 | Benton Harbor, MI | 0.8847 |
| | Berrien, MI | |
| 0875 | Bergen-Passaic, NJ | 1.1967 |
| | Bergen, NJ | |
| | Passaic, NJ | |
| 0880 | Billings, MT | 0.8961 |
| | Yellowstone, MT | |
| 0920 | Biloxi-Gulfport-Pascagoula, MS | 0.8649 |
| | Hancock, MS | |
| | Harrison, MS | |
| | Jackson, MS | |
| 0960 | Binghamton, NY | 0.8447 |
| | Broome, NY | |
| | Tioga, NY | |
| 1000 | Birmingham, AL | 0.9199 |
| | Blount, AL | |
| | Jefferson, AL | |
| | St. Clair, AL | |
| | Shelby, AL | |
| 1010 | Bismarck, ND | 0.7505 |
| | Burleigh, ND | |
| | Morton, ND | |
| 1020 | Bloomington, IN | 0.8588 |
| | Monroe, IN | |
| 1040 | Bloomington-Normal, IL | 0.9111 |
| | McLean, IL | |
| 1080 | Boise City, ID | 0.9352 |
| | Ada, ID | |
| | Canyon, ID | |
| 1123 | Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH | 1.1291 |
| | Bristol, MA | |
| | Essex, MA | |
| | Middlesex, MA | |
| | Norfolk, MA | |
| | Plymouth, MA | |
| | Suffolk, MA | |
| | Worcester, MA | |
| | Hillsborough, NH | |
| | Merrimack, NH | |
| | Rockingham, NH | |
| | Strafford, NH | |
| 1125 | Boulder-Longmont, CO | 1.0046 |
| | Boulder, CO | |
| 1145 | Brazoria, TX | 0.8525 |
| | Brazoria, TX | |
| 1150 | Bremerton, WA | 1.0614 |
| | Kitsap, WA | |
| 1240 | Brownsville-Harlingen-San Benito, TX | 1.0125 |
| | Cameron, TX | |
| 1260 | Bryan-College Station, TX | 0.9219 |
| | Brazos, TX | |
| 1280 | Buffalo-Niagara Falls, NY | 0.9339 |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Erie, NY | |
| | Niagara, NY | |
| 1303 | Burlington, VT | 0.9322 |
| | Chittenden, VT | |
| | Franklin, VT | |
| | Grand Isle, VT | |
| 1310 | Caguas, PR | 0.4061 |
| | Caguas, PR | |
| | Cayey, PR | |
| | Cidra, PR | |
| | Gurabo, PR | |
| | San Lorenzo, PR | |
| 1320 | Canton-Massillon, OH | 0.8895 |
| | Carroll, OH | |
| | Stark, OH | |
| 1350 | Casper, WY | 0.9244 |
| | Natrona, WY | |
| 1360 | Cedar Rapids, IA | 0.8975 |
| | Linn, IA | |
| 1400 | Champaign-Urbana, IL | 0.9527 |
| | Champaign, IL | |
| 1440 | Charleston-North Charleston, SC | 0.9420 |
| | Berkeley, SC | |
| | Charleston, SC | |
| | Dorchester, SC | |
| 1480 | Charleston, WV | 0.8876 |
| | Kanawha, WV | |
| | Putnam, WV | |
| 1520 | Charlotte-Gastonia-Rock Hill, NC-SC | 0.9712 |
| | Cabarrus, NC | |
| | Gaston, NC | |
| | Lincoln, NC | |
| | Mecklenburg, NC | |
| | Rowan, NC | |
| | Union, NC | |
| | York, SC | |
| 1540 | Charlottesville, VA | 1.0295 |
| | Albemarle, VA | |
| | Charlottesville City, VA | |
| | Fluvanna, VA | |
| | Greene, VA | |
| 1560 | Chattanooga, TN-GA | 0.9207 |
| | Catoosa, GA | |
| | Dade, GA | |
| | Walker, GA | |
| | Hamilton, TN | |
| | Marion, TN | |
| 1580 | Cheyenne, WY | 0.8980 |
| | Laramie, WY | |
| 1600 | Chicago, IL | 1.0852 |
| | Cook, IL | |
| | De Kalb, IL | |
| | Du Page, IL | |
| | Grundy, IL | |
| | Kane, IL | |
| | Kendall, IL | |
| | Lake, IL | |
| | McHenry, IL | |
| | Will, IL | |
| 1620 | Chico-Paradise, CA | 1.0543 |
| | Butte, CA | |
| 1640 | Cincinnati, OH-KY-IN | 0.9595 |
| | Dearborn, IN | |
| | Ohio, IN | |
| | Boone, KY | |
| | Campbell, KY | |
| | Gallatin, KY | |
| | Grant, KY | |
| | Kenton, KY | |
| | Pendleton, KY | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Brown, OH | |
| | Clermont, OH | |
| | Hamilton, OH | |
| | Warren, OH | |
| 1660 | Clarksville-Hopkinsville, TN-KY | 0.8022 |
| | Christian, KY | |
| | Montgomery, TN | |
| 1680 | Cleveland-Lorain-Elyria, OH | 0.9626 |
| | Ashtabula, OH | |
| | Geauga, OH | |
| | Cuyahoga, OH | |
| | Lake, OH | |
| | Lorain, OH | |
| | Medina, OH | |
| 1720 | Colorado Springs, CO | 0.9793 |
| | El Paso, CO | |
| 1740 | Columbia MO | 0.8396 |
| | Boone, MO | |
| 1760 | Columbia, SC | 0.9450 |
| | Lexington, SC | |
| | Richland, SC | |
| 1800 | Columbus, GA-AL | 0.8690 |
| | Russell,AL | |
| | Chattanoochee, GA | |
| | Harris, GA | |
| | Muscogee, GA | |
| 1840 | Columbus, OH | 0.9753 |
| | Delaware, OH | |
| | Fairfield, OH | |
| | Franklin, OH | |
| | Licking, OH | |
| | Madison, OH | |
| | Pickaway, OH | |
| 1880 | Corpus Christi, TX | 0.8647 |
| | Nueces, TX | |
| | San Patricio, TX | |
| 1890 | Corvallis, OR | 1.0545 |
| | Benton, OR | |
| 1900 | Cumberland, MD-WV | 0.8662 |
| | Allegany MD | |
| | Mineral WV | |
| 1920 | Dallas, TX | 1.0049 |
| | Collin, TX | |
| | Dallas, TX | |
| | Denton, TX | |
| | Ellis, TX | |
| | Henderson, TX | |
| | Hunt, TX | |
| | Kaufman, TX | |
| | Rockwall, TX | |
| 1950 | Danville, VA | 0.8643 |
| | Danville City, VA | |
| | Pittsylvania, VA | |
| 1960 | Davenport-Moline-Rock Island, IA-IL | 0.8774 |
| | Scott, IA | |
| | Henry, IL | |
| | Rock Island, IL | |
| 2000 | Dayton-Springfield, OH | 0.9232 |
| | Clark, OH | |
| | Greene, OH | |
| | Miami, OH | |
| | Montgomery, OH | |
| 2020 | Daytona Beach, FL | 0.8900 |
| | Flagler, FL | |
| | Volusia, FL | |
| 2030 | Decatur, AL | 0.8894 |
| | Lawrence, AL | |
| | Morgan, AL | |
| 2040 | Decatur, IL | 0.8122 |
| | Macon, IL | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| 2080 | Denver, CO | 1.0905 |
| | Adams, CO | |
| | Arapahoe, CO | |
| | Broomfield, CO | |
| | Denver, CO | |
| | Douglas, CO | |
| | Jefferson, CO | |
| 2120 | Des Moines, IA | 0.9267 |
| | Dallas, IA | |
| | Polk, IA | |
| | Warren, IA | |
| 2160 | Detroit, MI | 1.0227 |
| | Lapeer, MI | |
| | Macomb, MI | |
| | Monroe, MI | |
| | Oakland, MI | |
| | St. Clair, MI | |
| | Wayne, MI | |
| 2180 | Dothan, AL | 0.7597 |
| | Dale, AL | |
| | Houston, AL | |
| 2190 | Dover, DE | 0.9825 |
| | Kent, DE | |
| 2200 | Dubuque, IA | 0.8748 |
| | Dubuque, IA | |
| 2240 | Duluth-Superior, MN-WI | 1.0356 |
| | St. Louis, MN | |
| | Douglas, WI | |
| 2281 | Dutchess County, NY | 1.1658 |
| | Dutchess, NY | |
| 2290 | Eau Claire, WI | 0.9139 |
| | Chippewa, WI | |
| | Eau Claire, WI | |
| 2320 | El Paso, TX | 0.9065 |
| | El Paso, TX | |
| 2330 | Elkhart-Goshen, IN | 0.9279 |
| | Elkhart, IN | |
| 2335 | Elmira, NY | 0.8445 |
| | Chemung, NY | |
| 2340 | Enid, OK | 0.9001 |
| | Garfield, OK | |
| 2360 | Erie, PA | 0.8699 |
| | Erie, PA | |
| 2400 | Eugene-Springfield, OR | 1.0940 |
| | Lane, OR | |
| 2440 | Evansville-Henderson, IN-KY | 0.8395 |
| | Posey, IN | |
| | Vanderburgh, IN | |
| | Warrick, IN | |
| | Henderson, KY | |
| 2520 | Fargo-Moorhead, ND-MN | 0.9115 |
| | Clay, MN | |
| | Cass, ND | |
| 2560 | Fayetteville, NC | 0.9363 |
| | Cumberland, NC | |
| 2580 | Fayetteville-Springdale-Rogers, AR | 0.8637 |
| | Benton, AR | |
| | Washington, AR | |
| 2620 | Flagstaff, AZ-UT | 1.0611 |
| | Coconino, AZ | |
| | Kane, UT | |
| 2640 | Flint, MI | 1.1178 |
| | Genesee, MI | |
| 2650 | Florence, AL | 0.7883 |
| | Colbert, AL | |
| | Lauderdale, AL | |
| 2655 | Florence, SC | 0.8961 |
| | Florence, SC | |
| 2670 | Fort Collins-Loveland, CO | 1.0219 |
| | Larimer, CO | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| 2680 | Ft. Lauderdale, FL | 1.0165 |
| | Broward, FL | |
| 2700 | Fort Myers-Cape Coral, FL | 0.9372 |
| | Lee, FL | |
| 2710 | Fort Pierce-Port St. Lucie, FL | 1.0046 |
| | Martin, FL | |
| | St. Lucie, FL | |
| 2720 | Fort Smith, AR-OK | 0.8303 |
| | Crawford, AR | |
| | Sebastian, AR | |
| | Sequoyah, OK | |
| 2750 | Fort Walton Beach, FL | 0.8786 |
| | Okaloosa, FL | |
| 2760 | Fort Wayne, IN | 0.9737 |
| | Adams, IN | |
| | Allen, IN | |
| | De Kalb, IN | |
| | Huntington, IN | |
| | Wells, IN | |
| | Whitley, IN | |
| 2800 | Forth Worth-Arlington, TX | 0.9538 |
| | Hood, TX | |
| | Johnson, TX | |
| | Parker, TX | |
| | Tarrant, TX | |
| 2840 | Fresno, CA | 1.0408 |
| | Fresno, CA | |
| | Madera, CA | |
| 2880 | Gadsden, AL | 0.8049 |
| | Etowah, AL | |
| 2900 | Gainesville, FL | 0.9459 |
| | Alachua, FL | |
| 2920 | Galveston-Texas City, TX | 0.9403 |
| | Galveston, TX | |
| 2960 | Gary, IN | 0.9343 |
| | Lake, IN | |
| | Porter, IN | |
| 2975 | Glens Falls, NY | 0.8467 |
| | Warren, NY | |
| | Washington, NY | |
| 2980 | Goldsboro, NC | 0.8779 |
| | Wayne, NC | |
| 2985 | Grand Forks, ND-MN | 0.9092 |
| | Polk, MN | |
| | Grand Forks, ND | |
| 2995 | Grand Junction, CO | 0.9900 |
| | Mesa, CO | |
| 3000 | Grand Rapids-Muskegon-Holland, MI | 0.9520 |
| | Allegan, MI | |
| | Kent, MI | |
| | Muskegon, MI | |
| | Ottawa, MI | |
| 3040 | Great Falls, MT | 0.8810 |
| | Cascade, MT | |
| 3060 | Greeley, CO | 0.9444 |
| | Weld, CO | |
| 3080 | Green Bay, WI | 0.9586 |
| | Brown, WI | |
| 3120 | Greensboro-Winston-Salem-High Point, NC | 0.9312 |
| | Alamance, NC | |
| | Davidson, NC | |
| | Davie, NC | |
| | Forsyth, NC | |
| | Guilford, NC | |
| | Randolph, NC | |
| | Stokes, NC | |
| | Yadkin, NC | |
| 3150 | Greenville, NC | 0.9183 |
| | Pitt, NC | |
| 3160 | Greenville-Spartanburg-Anderson, SC | 0.9400 |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Anderson, SC | |
| | Cherokee, SC | |
| | Greenville, SC | |
| | Pickens, SC | |
| | Spartanburg, SC | |
| 3180 | Hagerstown, MD | 0.9940 |
| | Washington, MD | |
| 3200 | Hamilton-Middletown, OH | 0.9066 |
| | Butler, OH | |
| 3240 | Harrisburg-Lebanon-Carlisle, PA | 0.9286 |
| | Cumberland, PA | |
| | Dauphin, PA | |
| | Lebanon, PA | |
| | Perry, PA | |
| 3283 | Hartford, CT | 1.1055 |
| | Hartford, CT | |
| | Litchfield, CT | |
| | Middlesex, CT | |
| | Tolland, CT | |
| 3285 | Hattiesburg, MS | 0.7362 |
| | Forrest, MS | |
| | Lamar, MS | |
| 3290 | Hickory-Morganton-Lenoir, NC | 0.9502 |
| | Alexander, NC | |
| | Burke, NC | |
| | Caldwell, NC | |
| | Catawba, NC | |
| 3320 | Honolulu, HI | 1.1014 |
| | Honolulu, HI | |
| 3350 | Houma, LA | 0.7721 |
| | Lafourche, LA | |
| | Terrebonne, LA | |
| 3360 | Houston, TX | 1.0117 |
| | Chambers, TX | |
| | Fort Bend, TX | |
| | Harris, TX | |
| | Liberty, TX | |
| | Montgomery, TX | |
| | Waller, TX | |
| 3400 | Huntington-Ashland, WV-KY-OH | 0.9565 |
| | Boyd, KY | |
| | Carter, KY | |
| | Greenup, KY | |
| | Lawrence, OH | |
| | Cabell, WV | |
| | Wayne, WV | |
| 3440 | Huntsville, AL | 0.8851 |
| | Limestone, AL | |
| | Madison, AL | |
| 3480 | Indianapolis, IN | 1.0039 |
| | Boone, IN | |
| | Hamilton, IN | |
| | Hancock, IN | |
| | Hendricks, IN | |
| | Johnson, IN | |
| | Madison, IN | |
| | Marion, IN | |
| | Morgan, IN | |
| | Shelby, IN | |
| 3500 | Iowa City, IA | 0.9655 |
| | Johnson, IA | |
| 3520 | Jackson, MI | 0.9146 |
| | Jackson, MI | |
| 3560 | Jackson, MS | 0.8406 |
| | Hinds, MS | |
| | Madison, MS | |
| | Rankin, MS | |
| 3580 | Jackson, TN | 0.8900 |
| | Chester, TN | |
| | Madison, TN | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| 3600 | Jacksonville, FL | 0.9548 |
| | Clay, FL | |
| | Duval, FL | |
| | Nassau, FL | |
| | St. Johns, FL | |
| 3605 | Jacksonville, NC | 0.8402 |
| | Onslow, NC | |
| 3610 | Jamestown, NY | 0.7589 |
| | Chautaqua, NY | |
| 3620 | Janesville-Beloit, WI | 0.9583 |
| | Rock, WI | |
| 3640 | Jersey City, NJ | 1.0923 |
| | Hudson, NJ | |
| 3660 | Johnson City-Kingsport-Bristol, TN-VA | 0.8203 |
| | Carter, TN | |
| | Hawkins, TN | |
| | Sullivan, TN | |
| | Unicoi, TN | |
| | Washington, TN | |
| | Bristol City, VA | |
| | Scott, VA | |
| | Washington, VA | |
| 3680 | Johnstown, PA | 0.7981 |
| | Cambria, PA | |
| | Somerset, PA | |
| 3700 | Jonesboro, AR | 0.7934 |
| | Craighead, AR | |
| 3710 | Joplin, MO | 0.8721 |
| | Jasper, MO | |
| | Newton, MO | |
| 3720 | Kalamazoo-Battlecreek, MI | 1.0350 |
| | Calhoun, MI | |
| | Kalamazoo, MI | |
| | Van Buren, MI | |
| 3740 | Kankakee, IL | 1.0603 |
| | Kankakee, IL | |
| 3760 | Kansas City, KS-MO | 0.9642 |
| | Johnson, KS | |
| | Leavenworth, KS | |
| | Miami, KS | |
| | Wyandotte, KS | |
| | Cass, MO | |
| | Clay, MO | |
| | Clinton, MO | |
| | Jackson, MO | |
| | Lafayette, MO | |
| | Platte, MO | |
| | Ray, MO | |
| 3800 | Kenosha, WI | 0.9772 |
| | Kenosha, WI | |
| 3810 | Killeen-Temple, TX | 0.9242 |
| | Bell, TX | |
| | Coryell, TX | |
| 3840 | Knoxville, TN | 0.8509 |
| | Anderson, TN | |
| | Blount, TN | |
| | Knox, TN | |
| | Loudon, TN | |
| | Sevier, TN | |
| | Union, TN | |
| 3850 | Kokomo, IN | 0.8986 |
| | Howard, IN | |
| | Tipton, IN | |
| 3870 | La Crosse, WI-MN | 0.9290 |
| | Houston, MN | |
| | La Crosse, WI | |
| 3880 | Lafayette, LA | 0.8105 |
| | Acadia, LA | |
| | Lafayette, LA | |
| | St. Landry, LA | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | St. Martin, LA | |
| 3920 | Lafayette, IN | 0.9068 |
| | Clinton, IN | |
| | Tippecanoe, IN | |
| 3960 | Lake Charles, LA | 0.7959 |
| | Calcasieu, LA | |
| 3980 | Lakeland-Winter Haven, FL | 0.8931 |
| | Polk, FL | |
| 4000 | Lancaster, PA | 0.9883 |
| | Lancaster, PA | |
| 4040 | Lansing-East Lansing, MI | 0.9659 |
| | Clinton, MI | |
| | Eaton, MI | |
| | Ingham, MI | |
| 4080 | Laredo, TX | 0.8747 |
| | Webb, TX | |
| 4100 | Las Cruces, NM | 0.8784 |
| | Dona Ana, NM | |
| 4120 | Las Vegas, NV-AZ | 1.1121 |
| | Mohave, AZ | |
| | Clark, NV | |
| | Nye, NV | |
| 4150 | Lawrence, KS | 0.8644 |
| | Douglas, KS | |
| 4200 | Lawton, OK | 0.8212 |
| | Comanche, OK | |
| 4243 | Lewiston-Auburn, ME | 0.9562 |
| | Androscoggin, ME | |
| 4280 | Lexington, KY | 0.8053 |
| | Bourbon, KY | |
| | Clark, KY | |
| | Fayette, KY | |
| | Jessamine, KY | |
| | Madison, KY | |
| | Scott, KY | |
| | Woodford, KY | |
| 4320 | Lima, OH | 0.9258 |
| | Allen, OH | |
| | Auglaize, OH | |
| 4360 | Lincoln, NE | 1.0208 |
| | Lancaster, NE | |
| 4400 | Little Rock-North Little, AR | 0.8827 |
| | Faulkner, AR | |
| | Lonoke, AR | |
| | Pulaski, AR | |
| | Saline, AR | |
| 4420 | Longview-Marshall, TX | 0.8739 |
| | Gregg, TX | |
| | Harrison, TX | |
| | Upshur, TX | |
| 4480 | Los Angeles-Long Beach, CA | 1.1732 |
| | Los Angeles, CA | |
| 4520 | Louisville, KY-IN | 0.9163 |
| | Clark, IN | |
| | Floyd, IN | |
| | Harrison, IN | |
| | Scott, IN | |
| | Bullitt, KY | |
| | Jefferson, KY | |
| | Oldham, KY | |
| 4600 | Lubbock, TX | 0.8777 |
| | Lubbock, TX | |
| 4640 | Lynchburg, VA | 0.9018 |
| | Amherst, VA | |
| | Bedford City, VA | |
| | Bedford, VA | |
| | Campbell, VA | |
| | Lynchburg City, VA | |
| 4680 | Macon, GA | 0.9596 |
| | Bibb, GA | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Houston, GA | |
| | Jones, GA | |
| | Peach, GA | |
| | Twiggs, GA | |
| 4720 | Madison, WI | 1.0395 |
| | Dane, WI | |
| 4800 | Mansfield, OH | 0.9105 |
| | Crawford, OH | |
| | Richland, OH | |
| 4840 | Mayaguez, PR | 0.4769 |
| | Anasco, PR | |
| | Cabo Rojo, PR | |
| | Hormigueros, PR | |
| | Mayaguez, PR | |
| | Sabana Grande, PR | |
| | San German, PR | |
| 4880 | McAllen-Edinburg-Mission, TX | 0.8602 |
| | Hidalgo, TX | |
| 4890 | Medford-Ashland, OR | 1.0534 |
| | Jackson, OR | |
| 4900 | Melbourne-Titusville-Palm Bay, FL | 0.9633 |
| | Brevard, FL | |
| 4920 | Memphis, TN-AR-MS | 0.9234 |
| | Crittenden, AR | |
| | De Soto, MS | |
| | Fayette, TN | |
| | Shelby, TN | |
| | Tipton, TN | |
| 4940 | Merced, CA | 1.0576 |
| | Merced, CA | |
| 5000 | Miami, FL | 1.0026 |
| | Dade, FL | |
| 5015 | Middlesex-Somerset-Hunterdon, NJ | 1.1360 |
| | Hunterdon, NJ | |
| | Middlesex, NJ | |
| | Somerset, NJ | |
| 5080 | Milwaukee-Waukesha, WI | 1.0076 |
| | Milwaukee, WI | |
| | Ozaukee, WI | |
| | Washington, WI | |
| | Waukesha, WI | |
| 5120 | Minneapolis-St. Paul, MN-WI | 1.1067 |
| | Anoka, MN | |
| | Carver, MN | |
| | Chisago, MN | |
| | Dakota, MN | |
| | Hennepin, MN | |
| | Isanti, MN | |
| | Ramsey, MN | |
| | Scott, MN | |
| | Sherburne, MN | |
| | Washington, MN | |
| | Wright, MN | |
| | Pierce, WI | |
| | St. Croix, WI | |
| 5140 | Missoula, MT | 0.9618 |
| | Missoula, MT | |
| 5160 | Mobile, AL | 0.7933 |
| | Baldwin, AL | |
| | Mobile, AL | |
| 5170 | Modesto, CA | 1.1966 |
| | Stanislaus, CA | |
| 5190 | Monmouth-Ocean, NJ | 1.0889 |
| | Monmouth, NJ | |
| | Ocean, NJ | |
| 5200 | Monroe, LA | 0.7913 |
| | Ouachita, LA | |
| 5240 | Montgomery, AL | 0.8300 |
| | Autauga, AL | |
| | Elmore, AL | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Montgomery, AL | |
| 5280 | Muncie, IN | 0.8580 |
| | Delaware, IN | |
| 5330 | Myrtle Beach, SC | 0.9022 |
| | Horry, SC | |
| 5345 | Naples, FL | 1.0596 |
| | Collier, FL | |
| 5360 | Nashville, TN | 1.0108 |
| | Cheatham, TN | |
| | Davidson, TN | |
| | Dickson, TN | |
| | Robertson, TN | |
| | Rutherford, TN | |
| | Sumner, TN | |
| | Williamson, TN | |
| | Wilson, TN | |
| 5380 | Nassau-Suffolk, NY | 1.2921 |
| | Nassau, NY | |
| | Suffolk, NY | |
| 5483 | New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 1.2254 |
| | Fairfield, CT | |
| | New Haven, CT | |
| 5523 | New London-Norwich, CT | 1.1596 |
| | New London, CT | |
| 5560 | New Orleans, LA | 0.9103 |
| | Jefferson, LA | |
| | Orleans, LA | |
| | Plaquemines, LA | |
| | St. Bernard, LA | |
| | St. Charles, LA | |
| | St. James, LA | |
| | St. John The Baptist, LA | |
| | St. Tammany, LA | |
| 5600 | New York, NY | 1.3588 |
| | Bronx, NY | |
| | Kings, NY | |
| | New York, NY | |
| | Putnam, NY | |
| | Queens, NY | |
| | Richmond, NY | |
| | Rockland, NY | |
| | Westchester, NY | |
| 5640 | Newark, NJ | 1.1625 |
| | Essex, NJ | |
| | Morris, NJ | |
| | Sussex, NJ | |
| | Union, NJ | |
| | Warren, NJ | |
| 5660 | Newburgh, NY-PA | 1.1171 |
| | Orange, NY | |
| | Pike, PA | |
| 5720 | Norfolk-Virginia Beach-Newport News, VA-NC | 0.8895 |
| | Currituck, NC | |
| | Chesapeake City, VA | |
| | Gloucester, VA | |
| | Hampton City, VA | |
| | Isle of Wight, VA | |
| | James City, VA | |
| | Mathews, VA | |
| | Newport News City, VA | |
| | Norfolk City, VA | |
| | Poquoson City,VA | |
| | Portsmouth City, VA | |
| | Suffolk City, VA | |
| | Virginia Beach City, VA | |
| | Williamsburg City, VA | |
| | York, VA | |
| 5775 | Oakland, CA | 1.5221 |
| | Alameda, CA | |
| | Contra Costa, CA | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| 5790 | Ocala, FL | 0.9153 |
| | Marion, FL | |
| 5800 | Odessa-Midland, TX | 0.9632 |
| | Ector, TX | |
| | Midland, TX | |
| 5880 | Oklahoma City, OK | 0.8966 |
| | Canadian, OK | |
| | Cleveland, OK | |
| | Logan, OK | |
| | McClain, OK | |
| | Oklahoma, OK | |
| | Pottawatomie, OK | |
| 5910 | Olympia, WA | 1.1007 |
| | Thurston, WA | |
| 5920 | Omaha, NE-IA | 0.9754 |
| | Pottawattamie, IA | |
| | Cass, NE | |
| | Douglas, NE | |
| | Sarpy, NE | |
| | Washington, NE | |
| 5945 | Orange County, CA | 1.1612 |
| | Orange, CA | |
| 5960 | Orlando, FL | 0.9742 |
| | Lake, FL | |
| | Orange, FL | |
| | Osceola, FL | |
| | Seminole, FL | |
| 5990 | Owensboro, KY | 0.8434 |
| | Daviess, KY | |
| 6015 | Panama City, FL | 0.8124 |
| | Bay, FL | |
| 6020 | Parkersburg-Marietta, WV-OH | 0.8288 |
| | Washington, OH | |
| | Wood, WV | |
| 6080 | Pensacola, FL | 0.8306 |
| | Escambia, FL | |
| | Santa Rosa, FL | |
| 6120 | Peoria-Pekin, IL | 0.8886 |
| | Peoria, IL | |
| | Tazewell, IL | |
| | Woodford, IL | |
| 6160 | Philadelphia, PA-NJ | 1.0824 |
| | Burlington, NJ | |
| | Camden, NJ | |
| | Gloucester, NJ | |
| | Salem, NJ | |
| | Bucks, PA | |
| | Chester, PA | |
| | Delaware, PA | |
| | Montgomery, PA | |
| | Philadelphia, PA | |
| 6200 | Phoenix-Mesa, AZ | 0.9982 |
| | Maricopa, AZ | |
| | Pinal, AZ | |
| 6240 | Pine Bluff, AR | 0.8673 |
| | Jefferson, AR | |
| 6280 | Pittsburgh, PA | 0.8756 |
| | Allegheny, PA | |
| | Beaver, PA | |
| | Butler, PA | |
| | Fayette, PA | |
| | Washington, PA | |
| | Westmoreland, PA | |
| 6323 | Pittsfield, MA | 1.0439 |
| | Berkshire, MA | |
| 6340 | Pocatello, ID | 0.9602 |
| | Bannock, ID | |
| 6360 | Ponce, PR | 0.4954 |
| | Guayanilla, PR | |
| | Juana Diaz, PR | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Penuelas, PR | |
| | Ponce, PR | |
| | Villalba, PR | |
| | Yauco, PR | |
| 6403 | Portland, ME | 1.0112 |
| | Cumberland, ME | |
| | Sagadahoc, ME | |
| | York, ME | |
| 6440 | Portland-Vancouver, OR-WA | 1.1403 |
| | Clackamas, OR | |
| | Columbia, OR | |
| | Multnomah, OR | |
| | Washington, OR | |
| | Yamhill, OR | |
| | Clark, WA | |
| 6483 | Providence-Warwick-Pawtucket, RI | 1.1062 |
| | Bristol, RI | |
| | Kent, RI | |
| | Newport, RI | |
| | Providence, RI | |
| | Washington, RI | |
| 6520 | Provo-Orem, UT | 0.9613 |
| | Utah, UT | |
| 6560 | Pueblo, CO | 0.8752 |
| | Pueblo, CO | |
| 6580 | Punta Gorda, FL | 0.9441 |
| | Charlotte, FL | |
| 6600 | Racine, WI | 0.9045 |
| | Racine, WI | |
| 6640 | Raleigh-Durham-Chapel Hill, NC | 1.0258 |
| | Chatham, NC | |
| | Durham, NC | |
| | Franklin, NC | |
| | Johnston, NC | |
| | Orange, NC | |
| | Wake, NC | |
| 6660 | Rapid City, SD | 0.8912 |
| | Pennington, SD | |
| 6680 | Reading, PA | 0.9216 |
| | Berks, PA | |
| 6690 | Redding, CA | 1.1835 |
| | Shasta, CA | |
| 6720 | Reno, NV | 1.0456 |
| | Washoe, NV | |
| 6740 | Richland-Kennewick-Pasco, WA | 1.0520 |
| | Benton, WA | |
| | Franklin, WA | |
| 6760 | Richmond-Petersburg, VA | 0.9398 |
| | Charles City County, VA | |
| | Chesterfield, VA | |
| | Colonial Heights City, VA | |
| | Dinwiddie, VA | |
| | Goochland, VA | |
| | Hanover, VA | |
| | Henrico, VA | |
| | Hopewell City, VA | |
| | New Kent, VA | |
| | Petersburg City, VA | |
| | Powhatan, VA | |
| | Prince George, VA | |
| | Richmond City, VA | |
| 6780 | Riverside-San Bernardino, CA | 1.0975 |
| | Riverside, CA | |
| | San Bernardino, CA | |
| 6800 | Roanoke, VA | 0.8429 |
| | Botetourt, VA | |
| | Roanoke, VA | |
| | Roanoke City, VA | |
| | Salem City, VA | |
| 6820 | Rochester, MN | 1.1504 |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Olmsted, MN | |
| 6840 | Rochester, NY | 0.9196 |
| | Genesee, NY | |
| | Livingston, NY | |
| | Monroe, NY | |
| | Ontario, NY | |
| | Orleans, NY | |
| | Wayne, NY | |
| 6880 | Rockford, IL | 0.9626 |
| | Boone, IL | |
| | Ogle, IL | |
| | Winnebago, IL | |
| 6895 | Rocky Mount, NC | 0.8998 |
| | Edgecombe, NC | |
| | Nash, NC | |
| 6920 | Sacramento, CA | 1.1849 |
| | El Dorado, CA | |
| | Placer, CA | |
| | Sacramento, CA | |
| 6960 | Saginaw-Bay City-Midland, MI | 0.9696 |
| | Bay, MI | |
| | Midland, MI | |
| | Saginaw, MI | |
| 6980 | St. Cloud, MN | 1.0215 |
| | Benton, MN | |
| | Stearns, MN | |
| 7000 | St. Joseph, MO | 1.0013 |
| | Andrews, MO | |
| | Buchanan, MO | |
| 7040 | St. Louis, MO-IL | 0.9081 |
| | Clinton, IL | |
| | Jersey, IL | |
| | Madison, IL | |
| | Monroe, IL | |
| | St. Clair, IL | |
| | Franklin, MO | |
| | Jefferson, MO | |
| | Lincoln, MO | |
| | St. Charles, MO | |
| | St. Louis, MO | |
| | St. Louis City, MO | |
| | Warren, MO | |
| | Sullivan City, MO | |
| 7080 | Salem, OR | 1.0557 |
| | Marion, OR | |
| | Polk, OR | |
| 7120 | Salinas, CA | 1.3823 |
| | Monterey, CA | |
| 7160 | Salt Lake City-Ogden, UT | 0.9487 |
| | Davis, UT | |
| | Salt Lake, UT | |
| | Weber, UT | |
| 7200 | San Angelo, TX | 0.8168 |
| | Tom Green, TX | |
| 7240 | San Antonio, TX | 0.9023 |
| | Bexar, TX | |
| | Comal, TX | |
| | Guadalupe, TX | |
| | Wilson, TX | |
| 7320 | San Diego, CA | 1.1267 |
| | San Diego, CA | |
| 7360 | San Francisco, CA | 1.4712 |
| | Marin, CA | |
| | San Francisco, CA | |
| | San Mateo, CA | |
| 7400 | San Jose, CA | 1.4744 |
| | Santa Clara, CA | |
| 7440 | San Juan-Bayamon, PR | 0.4802 |
| | Aguas Buenas, PR | |
| | Barceloneta, PR | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Bayamon, PR | |
| | Canovanas, PR | |
| | Carolina, PR | |
| | Catano, PR | |
| | Ceiba, PR | |
| | Comerio, PR | |
| | Corozal, PR | |
| | Dorado, PR | |
| | Fajardo, PR | |
| | Florida, PR | |
| | Guaynabo, PR | |
| | Humacao, PR | |
| | Juncos, PR | |
| | Los Piedras, PR | |
| | Loiza, PR | |
| | Luguillo, PR | |
| | Manati, PR | |
| | Morovis, PR | |
| | Naguabo, PR | |
| | Naranjito, PR | |
| | Rio Grande, PR | |
| | San Juan, PR | |
| | Toa Alta, PR | |
| | Toa Baja, PR | |
| | Trujillo Alto, PR | |
| | Vega Alta, PR | |
| | Vega Baja, PR | |
| | Yabucoa, PR | |
| 7460 | San Luis Obispo-Atascadero-Paso Robles, CA | 1.1118 |
| | San Luis Obispo, CA | |
| 7480 | Santa Barbara-Santa Maria-Lompoc, CA | 1.0771 |
| | Santa Barbara, CA | |
| 7485 | Santa Cruz-Watsonville, CA | 1.4780 |
| | Santa Cruz, CA | |
| 7490 | Santa Fe, NM | 1.0590 |
| | Los Alamos, NM | |
| | Santa Fe, NM | |
| 7500 | Santa Rosa, CA | 1.2962 |
| | Sonoma, CA | |
| 7510 | Sarasota-Bradenton, FL | 0.9630 |
| | Manatee, FL | |
| | Sarasota, FL | |
| 7520 | Savannah, GA | 0.9460 |
| | Bryan, GA | |
| | Chatham, GA | |
| | Effingham, GA | |
| 7560 | Scranton--Wilkes-Barre--Hazleton, PA | 0.8523 |
| | Columbia, PA | |
| | Lackawanna, PA | |
| | Luzerne, PA | |
| | Wyoming, PA | |
| 7600 | Seattle-Bellevue-Everett, WA | 1.1479 |
| | Island, WA | |
| | King, WA | |
| | Snohomish, WA | |
| 7610 | Sharon, PA | 0.7881 |
| | Mercer, PA | |
| 7620 | Sheboygan, WI | 0.8949 |
| | Sheboygan, WI | |
| 7640 | Sherman-Denison, TX | 0.9617 |
| | Grayson, TX | |
| 7680 | Shreveport-Bossier City, LA | 0.9112 |
| | Bossier, LA | |
| | Caddo, LA | |
| | Webster, LA | |
| 7720 | Sioux City, IA-NE | 0.9094 |
| | Woodbury, IA | |
| | Dakota, NE | |
| 7760 | Sioux Falls, SD | 0.9441 |
| | Lincoln, SD | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| | Minnehaha, SD | |
| 7800 | South Bend, IN | 0.9447 |
| | St. Joseph, IN | |
| 7840 | Spokane, WA | 1.0661 |
| | Spokane, WA | |
| 7880 | Springfield, IL | 0.8738 |
| | Menard, IL | |
| | Sangamon, IL | |
| 7920 | Springfield, MO | 0.8597 |
| | Christian, MO | |
| | Greene, MO | |
| | Webster, MO | |
| 8003 | Springfield, MA | 1.0174 |
| | Hampden, MA | |
| | Hampshire, MA | |
| 8050 | State College, PA | 0.8462 |
| | Centre, PA | |
| 8080 | Steubenville-Weirton, OH-WV | 0.8281 |
| | Jefferson, OH | |
| | Brooke, WV | |
| | Hancock, WV | |
| 8120 | Stockton-Lodi, CA | 1.0564 |
| | San Joaquin, CA | |
| 8140 | Sumter, SC | 0.8520 |
| | Sumter, SC | |
| 8160 | Syracuse, NY | 0.9394 |
| | Cayuga, NY | |
| | Madison, NY | |
| | Onondaga, NY | |
| | Oswego, NY | |
| 8200 | Tacoma, WA | 1.1078 |
| | Pierce, WA | |
| 8240 | Tallahassee, FL | 0.8656 |
| | Gadsden, FL | |
| | Leon, FL | |
| 8280 | Tampa-St. Petersburg-Clearwater, FL | 0.9024 |
| | Hernando, FL | |
| | Hillsborough, FL | |
| | Pasco, FL | |
| | Pinellas, FL | |
| 8320 | Terre Haute, IN | 0.8582 |
| | Clay, IN | |
| | Vermillion, IN | |
| | Vigo, IN | |
| 8360 | Texarkana, AR-Texarkana, TX | 0.8414 |
| | Miller, AR | |
| | Bowie, TX | |
| 8400 | Toledo, OH | 0.9525 |
| | Fulton, OH | |
| | Lucas, OH | |
| | Wood, OH | |
| 8440 | Topeka, KS | 0.8904 |
| | Shawnee, KS | |
| 8480 | Trenton, NJ | 1.0276 |
| | Mercer, NJ | |
| 8520 | Tucson, AZ | 0.8926 |
| | Pima, AZ | |
| 8560 | Tulsa, OK | 0.8729 |
| | Creek, OK | |
| | Osage, OK | |
| | Rogers, OK | |
| | Tulsa, OK | |
| | Wagoner, OK | |
| 8600 | Tuscaloosa, AL | 0.8440 |
| | Tuscaloosa, AL | |
| 8640 | Tyler, TX | 0.9502 |
| | Smith, TX | |
| 8680 | Utica-Rome, NY | 0.8295 |
| | Herkimer, NY | |
| | Oneida, NY | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| 8720 | Vallejo-Fairfield-Napa, CA | 1.3517 |
| | Napa, CA | |
| | Solano, CA | |
| 8735 | Ventura, CA | 1.1105 |
| | Ventura, CA | |
| 8750 | Victoria, TX | 0.8469 |
| | Victoria, TX | |
| 8760 | Vineland-Millville-Bridgeton, NJ | 1.0573 |
| | Cumberland, NJ | |
| 8780 | Visalia-Tulare-Porterville, CA | 0.9964 |
| | Tulare, CA | |
| 8800 | Waco, TX | 0.8146 |
| | McLennan, TX | |
| 8840 | Washington, DC-MD-VA-WV | 1.0971 |
| | District of Columbia, DC | |
| | Calvert, MD | |
| | Charles, MD | |
| | Frederick, MD | |
| | Montgomery, MD | |
| | Prince Georges, MD | |
| | Alexandria City, VA | |
| | Arlington, VA | |
| | Clarke, VA | |
| | Culpepper, VA | |
| | Fairfax, VA | |
| | Fairfax City, VA | |
| | Falls Church City, VA | |
| | Fauquier, VA | |
| | Fredericksburg City, VA | |
| | King George, VA | |
| | Loudoun, VA | |
| | Manassas City, VA | |
| | Manassas Park City, VA | |
| | Prince William, VA | |
| | Spotsylvania, VA | |
| | Stafford, VA | |
| | Warren, VA | |
| | Berkeley, WV | |
| | Jefferson, WV | |
| 8920 | Waterloo-Cedar Falls, IA | 0.8633 |
| | Black Hawk, IA | |
| 8940 | Wausau, WI | 0.9570 |
| | Marathon, WI | |
| 8960 | West Palm Beach-Boca Raton, FL | 1.0059 |
| | Palm Beach, FL | |
| 9000 | Wheeling, OH-WV | 0.7449 |
| | Belmont, OH | |
| | Marshall, WV | |
| | Ohio, WV | |
| 9040 | Wichita, KS | 0.9473 |
| | Butler, KS | |
| | Harvey, KS | |
| | Sedgwick, KS | |
| 9080 | Wichita Falls, TX | 0.8395 |
| | Archer, TX | |
| | Wichita, TX | |
| 9140 | Williamsport, PA | 0.8486 |
| | Lycoming, PA | |
| 9160 | Wilmington-Newark, DE-MD | 1.1121 |
| | New Castle, DE | |
| | Cecil, MD | |
| 9200 | Wilmington, NC | 0.9237 |
| | New Hanover, NC | |
| | Brunswick, NC | |
| 9260 | Yakima, WA | 1.0323 |
| | Yakima, WA | |
| 9270 | Yolo, CA | 0.9378 |
| | Yolo, CA | |
| 9280 | York, PA | 0.9150 |
| | York, PA | |

ADDENDUM B.—CY 2005 WAGE INDEX FOR URBAN AREAS PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

| MSA | Urban area (constituent counties or county equivalents) | Wage index |
|---|---|---|
| 9320 | Youngstown-Warren, OH | 0.9518 |
| | Columbiana, OH | |
| | Mahoning, OH | |
| | Trumbull, OH | |
| 9340 | Yuba City, CA | 1.0364 |
| | Sutter, CA | |
| | Yuba, CA | |
| 9360 | Yuma, AZ | 0.8871 |
| | Yuma, AZ | |

ADDENDUM C.—COMPARISON OF PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR FY 2003 AND CY 2005

| Rural area | FY 2003 Wage index | CY 2005 Wage index | Percent change, FY 2003–CY 2005 |
|---|---|---|---|
| ALABAMA | 0.7660 | 0.7637 | −0.30 |
| ALASKA | 1.2293 | 1.1637 | −5.34 |
| ARIZONA | 0.8493 | 0.9140 | 7.62 |
| ARKANSAS | 0.7666 | 0.7704 | 0.50 |
| CALIFORNIA | 0.9840 | 1.0297 | 4.64 |
| COLORADO | 0.9015 | 0.9368 | 3.92 |
| CONNECTICUT | 1.2394 | 1.1917 | −3.85 |
| DELAWARE | 0.9128 | 0.9504 | 4.12 |
| FLORIDA | 0.8814 | 0.8789 | −0.28 |
| GEORGIA | 0.8230 | 0.8247 | 0.21 |
| GUAM | 0.9611 | 0.9611 | 0.00 |
| HAWAII | 1.0255 | 1.0522 | 2.60 |
| IDAHO | 0.8747 | 0.8826 | 0.90 |
| ILLINOIS | 0.8204 | 0.8341 | 1.67 |
| INDIANA | 0.8755 | 0.8736 | −0.22 |
| IOWA | 0.8315 | 0.8550 | 2.83 |
| KANSAS | 0.7923 | 0.8088 | 2.08 |
| KENTUCKY | 0.8079 | 0.7844 | −2.91 |
| LOUISIANA | 0.7567 | 0.7291 | −3.65 |
| MAINE | 0.8874 | 0.9039 | 1.86 |
| MARYLAND | 0.8946 | 0.9179 | 2.60 |
| MASSACHUSETTS | 1.1288 | 1.0217 | −9.49 |
| MICHIGAN | 0.9000 | 0.8741 | −2.88 |
| MINNESOTA | 0.9151 | 0.9339 | 2.05 |
| MISSISSIPPI | 0.7680 | 0.7583 | −1.26 |
| MISSOURI | 0.8021 | 0.7829 | −2.39 |
| MONTANA | 0.8481 | 0.8701 | 2.59 |
| NEBRASKA | 0.8204 | 0.9035 | 10.13 |
| NEVADA | 0.9577 | 0.9833 | 2.67 |
| NEW HAMPSHIRE | 0.9796 | 0.9940 | 1.47 |
| New Jersey | | | |
| NEW MEXICO | 0.8872 | 0.8529 | −3.87 |
| NEW YORK | 0.8542 | 0.8403 | −1.63 |
| NORTH CAROLINA | 0.8666 | 0.8501 | −1.90 |
| NORTH DAKOTA | 0.7788 | 0.7743 | −0.58 |
| OHIO | 0.8613 | 0.8760 | 1.71 |
| OKLAHOMA | 0.7590 | 0.7537 | −0.70 |
| OREGON | 1.0303 | 1.0050 | −2.46 |
| PENNSYLVANIA | 0.8462 | 0.8348 | −1.35 |
| PUERTO RICO | 0.4356 | 0.4047 | −7.09 |
| RHODE ISLAND | | | |
| SOUTH CAROLINA | 0.8607 | 0.8640 | 0.38 |
| SOUTH DAKOTA | 0.7815 | 0.8393 | 7.40 |
| TENNESSEE | 0.7877 | 0.7876 | −0.01 |
| TEXAS | 0.7821 | 0.7910 | 1.14 |
| UTAH | 0.9312 | 0.8843 | −5.04 |
| VERMONT | 0.9345 | 0.9375 | 0.32 |
| VIRGINIA | 0.8504 | 0.8480 | −0.28 |
| VIRGIN ISLANDS | 0.7845 | 0.7457 | −4.95 |
| WASHINGTON | 1.0179 | 1.0072 | −1.05 |
| WEST VIRGINIA | 0.7975 | 0.8084 | 1.37 |
| WISCONSIN | 0.9162 | 0.9498 | 3.67 |
| WYOMING | 0.9007 | 0.9182 | 1.94 |

| Urban MSA | FY 2003 wage index | CY 2005 wage index | Percent change, FY 2003–CY 2005 |
|---|---|---|---|
| 0040 | 0.7792 | 0.8009 | 2.78 |
| 0060 | 0.4587 | 0.4294 | −6.39 |
| 0080 | 0.9600 | 0.9055 | −5.68 |
| 0120 | 1.0594 | 1.1266 | 6.34 |
| 0160 | 0.8384 | 0.8570 | 2.22 |
| 0200 | 0.9315 | 1.0485 | 12.56 |
| 0220 | 0.7859 | 0.8171 | 3.97 |
| 0240 | 0.9735 | 0.9536 | −2.04 |
| 0280 | 0.9225 | 0.8462 | −8.27 |
| 0320 | 0.9034 | 0.9178 | 1.59 |
| 0380 | 1.2358 | 1.2109 | −2.01 |
| 0440 | 1.1103 | 1.0817 | −2.58 |
| 0450 | 0.8044 | 0.7881 | −2.03 |
| 0460 | 0.8997 | 0.9115 | 1.31 |
| 0470 | 0.4337 | 0.3757 | −13.37 |
| 0480 | 0.9876 | 0.9502 | −3.79 |
| 0500 | 1.0211 | 1.0203 | −0.08 |
| 0520 | 0.9991 | 0.9971 | −0.20 |
| 0560 | 1.1017 | 1.0907 | −1.00 |
| 0580 | 0.8325 | 0.8215 | −1.32 |
| 0600 | 1.0264 | 0.9208 | −10.29 |
| 0640 | 0.9637 | 0.9596 | −0.43 |
| 0680 | 0.9899 | 1.0036 | 1.38 |
| 0720 | 0.9929 | 0.9908 | −0.21 |
| 0733 | 0.9664 | 0.9955 | 3.01 |
| 0743 | 1.3202 | 1.2335 | −6.57 |
| 0760 | 0.8294 | 0.8354 | 0.72 |
| 0840 | 0.8324 | 0.8616 | 3.51 |
| 0860 | 1.2282 | 1.1643 | −5.20 |
| 0870 | 0.9042 | 0.8847 | −2.16 |
| 0875 | 1.2150 | 1.1967 | −1.51 |
| 0880 | 0.9022 | 0.8961 | −0.68 |
| 0920 | 0.8757 | 0.8649 | −1.23 |
| 0960 | 0.8341 | 0.8447 | 1.27 |
| 1000 | 0.9222 | 0.9199 | −0.25 |
| 1010 | 0.7972 | 0.7505 | −5.86 |
| 1020 | 0.8907 | 0.8588 | −3.58 |
| 1040 | 0.9109 | 0.9111 | 0.02 |
| 1080 | 0.9310 | 0.9352 | 0.45 |
| 1123 | 1.1235 | 1.1291 | 0.50 |
| 1125 | 0.9689 | 1.0046 | 3.68 |
| 1145 | 0.8535 | 0.8525 | −0.12 |
| 1150 | 1.0944 | 1.0614 | −3.02 |
| 1240 | 0.8880 | 1.0125 | 14.02 |
| 1260 | 0.8821 | 0.9219 | 4.51 |
| 1280 | 0.9365 | 0.9339 | −0.28 |
| 1303 | 1.0052 | 0.9322 | −7.26 |
| 1310 | 0.4371 | 0.4061 | −7.09 |
| 1320 | 0.8932 | 0.8895 | −0.41 |
| 1350 | 0.9690 | 0.9244 | −4.60 |
| 1360 | 0.9056 | 0.8975 | −0.89 |
| 1400 | 1.0635 | 0.9527 | −10.42 |
| 1440 | 0.9235 | 0.9420 | 2.00 |
| 1480 | 0.8898 | 0.8876 | −0.25 |
| 1520 | 0.9850 | 0.9712 | −1.40 |
| 1540 | 1.0438 | 1.0295 | −1.37 |
| 1560 | 0.8976 | 0.9207 | 2.57 |
| 1580 | 0.8628 | 0.8980 | 4.08 |
| 1600 | 1.1044 | 1.0852 | −1.74 |
| 1620 | 0.9745 | 1.0543 | 8.19 |
| 1640 | 0.9381 | 0.9595 | 2.28 |
| 1660 | 0.8406 | 0.8022 | −4.57 |
| 1680 | 0.9670 | 0.9626 | −0.46 |
| 1720 | 0.9916 | 0.9793 | −1.24 |
| 1740 | 0.8496 | 0.8396 | −1.18 |
| 1760 | 0.9307 | 0.9450 | 1.54 |
| 1800 | 0.8374 | 0.8690 | 3.77 |
| 1840 | 0.9751 | 0.9753 | 0.02 |
| 1880 | 0.8729 | 0.8647 | −0.94 |
| 1890 | 1.1453 | 1.0545 | −7.93 |
| 1900 | 0.7847 | 0.8662 | 10.39 |
| 1920 | 0.9998 | 1.0049 | 0.51 |
| 1950 | 0.8859 | 0.8643 | −2.44 |

| Urban MSA | FY 2003 wage index | CY 2005 wage index | Percent change, FY 2003–CY 2005 |
|---|---|---|---|
| 1960 | 0.8835 | 0.8774 | −0.69 |
| 2000 | 0.9282 | 0.9232 | −0.54 |
| 2020 | 0.9062 | 0.8900 | −1.79 |
| 2030 | 0.8973 | 0.8894 | −0.88 |
| 2040 | 0.8055 | 0.8122 | 0.83 |
| 2080 | 1.0601 | 1.0905 | 2.87 |
| 2120 | 0.8791 | 0.9267 | 5.41 |
| 2160 | 1.0448 | 1.0227 | −2.12 |
| 2180 | 0.8137 | 0.7597 | −6.64 |
| 2190 | 0.9356 | 0.9825 | 5.01 |
| 2200 | 0.8795 | 0.8748 | −0.53 |
| 2240 | 1.0368 | 1.0356 | −0.12 |
| 2281 | 1.0684 | 1.1658 | 9.12 |
| 2290 | 0.8952 | 0.9139 | 2.09 |
| 2320 | 0.9265 | 0.9065 | −2.16 |
| 2330 | 0.9722 | 0.9279 | −4.56 |
| 2335 | 0.8416 | 0.8445 | 0.34 |
| 2340 | 0.8376 | 0.9001 | 7.46 |
| 2360 | 0.8925 | 0.8699 | −2.53 |
| 2400 | 1.0944 | 1.0940 | −0.04 |
| 2440 | 0.8177 | 0.8395 | 2.67 |
| 2520 | 0.9684 | 0.9115 | −5.88 |
| 2560 | 0.8889 | 0.9363 | 5.33 |
| 2580 | 0.8100 | 0.8637 | 6.63 |
| 2620 | 1.0682 | 1.0611 | −0.66 |
| 2640 | 1.1135 | 1.1178 | 0.39 |
| 2650 | 0.7792 | 0.7883 | 1.17 |
| 2655 | 0.8780 | 0.8961 | 2.06 |
| 2670 | 1.0066 | 1.0219 | 1.52 |
| 2680 | 1.0297 | 1.0165 | −1.28 |
| 2700 | 0.9680 | 0.9372 | −3.18 |
| 2710 | 0.9823 | 1.0046 | 2.27 |
| 2720 | 0.7895 | 0.8303 | 5.17 |
| 2750 | 0.9693 | 0.8786 | −9.36 |
| 2760 | 0.9457 | 0.9737 | 2.96 |
| 2800 | 0.9446 | 0.9538 | 0.97 |
| 2840 | 1.0216 | 1.0408 | 1.88 |
| 2880 | 0.8505 | 0.8049 | −5.36 |
| 2900 | 0.9871 | 0.9459 | −4.17 |
| 2920 | 0.9465 | 0.9403 | −0.66 |
| 2960 | 0.9584 | 0.9343 | −2.51 |
| 2975 | 0.8281 | 0.8467 | 2.25 |
| 2980 | 0.8892 | 0.8779 | −1.27 |
| 2985 | 0.8897 | 0.9092 | 2.19 |
| 2995 | 0.9456 | 0.9900 | 4.70 |
| 3000 | 0.9525 | 0.9520 | −0.05 |
| 3040 | 0.8950 | 0.8810 | −1.56 |
| 3060 | 0.9237 | 0.9444 | 2.24 |
| 3080 | 0.9502 | 0.9586 | 0.88 |
| 3120 | 0.9282 | 0.9312 | 0.32 |
| 3150 | 0.9100 | 0.9183 | 0.91 |
| 3160 | 0.9122 | 0.9400 | 3.05 |
| 3180 | 0.9268 | 0.9940 | 7.25 |
| 3200 | 0.9418 | 0.9066 | −3.74 |
| 3240 | 0.9223 | 0.9286 | 0.68 |
| 3283 | 1.1549 | 1.1055 | −4.28 |
| 3285 | 0.7659 | 0.7362 | −3.88 |
| 3290 | 0.9028 | 0.9502 | 5.25 |
| 3320 | 1.1457 | 1.1014 | −3.87 |
| 3350 | 0.8385 | 0.7721 | −7.92 |
| 3360 | 0.9892 | 1.0117 | 2.27 |
| 3400 | 0.9636 | 0.9565 | −0.74 |
| 3440 | 0.8903 | 0.8851 | −0.58 |
| 3480 | 0.9717 | 1.0039 | 3.31 |
| 3500 | 0.9587 | 0.9655 | 0.71 |
| 3520 | 0.9532 | 0.9146 | −4.05 |
| 3560 | 0.8607 | 0.8406 | −2.34 |
| 3580 | 0.9275 | 0.8900 | −4.04 |
| 3600 | 0.9381 | 0.9548 | 1.78 |
| 3605 | 0.8239 | 0.8402 | 1.98 |
| 3610 | 0.7976 | 0.7589 | −4.85 |
| 3620 | 0.9849 | 0.9583 | −2.70 |
| 3640 | 1.1190 | 1.0923 | −2.39 |

| Urban MSA | FY 2003 wage index | CY 2005 wage index | Percent change, FY 2003–CY 2005 |
|---|---|---|---|
| 3660 | 0.8268 | 0.8203 | −0.79 |
| 3680 | 0.8329 | 0.7981 | −4.18 |
| 3700 | 0.7749 | 0.7934 | 2.39 |
| 3710 | 0.8613 | 0.8721 | 1.25 |
| 3720 | 1.0595 | 1.0350 | −2.31 |
| 3740 | 1.0790 | 1.0603 | −1.73 |
| 3760 | 0.9736 | 0.9642 | −0.97 |
| 3800 | 0.9686 | 0.9772 | 0.89 |
| 3810 | 1.0399 | 0.9242 | −11.13 |
| 3840 | 0.8970 | 0.8509 | −5.14 |
| 3850 | 0.8971 | 0.8986 | 0.17 |
| 3870 | 0.9400 | 0.9290 | −1.17 |
| 3880 | 0.8475 | 0.8105 | −4.37 |
| 3920 | 0.9278 | 0.9068 | −2.26 |
| 3960 | 0.7965 | 0.7959 | −0.08 |
| 3980 | 0.9357 | 0.8931 | −4.55 |
| 4000 | 0.9078 | 0.9883 | 8.87 |
| 4040 | 0.9726 | 0.9659 | −0.69 |
| 4080 | 0.8472 | 0.8747 | 3.25 |
| 4100 | 0.8745 | 0.8784 | 0.45 |
| 4120 | 1.1521 | 1.1121 | −3.47 |
| 4150 | 0.7923 | 0.8644 | 9.10 |
| 4200 | 0.8315 | 0.8212 | −1.24 |
| 4243 | 0.9179 | 0.9562 | 4.17 |
| 4280 | 0.8581 | 0.8053 | −6.15 |
| 4320 | 0.9483 | 0.9258 | −2.37 |
| 4360 | 0.9892 | 1.0208 | 3.19 |
| 4400 | 0.9097 | 0.8827 | −2.97 |
| 4420 | 0.8629 | 0.8739 | 1.27 |
| 4480 | 1.2001 | 1.1732 | −2.24 |
| 4520 | 0.9276 | 0.9163 | −1.22 |
| 4600 | 0.9646 | 0.8777 | −9.01 |
| 4640 | 0.9219 | 0.9018 | −2.18 |
| 4680 | 0.9204 | 0.9596 | 4.26 |
| 4720 | 1.0467 | 1.0395 | −0.69 |
| 4800 | 0.8900 | 0.9105 | 2.30 |
| 4840 | 0.4914 | 0.4769 | −2.95 |
| 4880 | 0.8428 | 0.8602 | 2.06 |
| 4890 | 1.0498 | 1.0534 | 0.34 |
| 4900 | 1.0253 | 0.9633 | −6.05 |
| 4920 | 0.8920 | 0.9234 | 3.52 |
| 4940 | 0.9837 | 1.0576 | 7.51 |
| 5000 | 0.9802 | 1.0026 | 2.29 |
| 5015 | 1.1213 | 1.1360 | 1.31 |
| 5080 | 0.9893 | 1.0076 | 1.85 |
| 5120 | 1.0903 | 1.1067 | 1.50 |
| 5140 | 0.9157 | 0.9618 | 5.03 |
| 5160 | 0.8108 | 0.7933 | −2.16 |
| 5170 | 1.0498 | 1.1966 | 13.98 |
| 5190 | 1.0674 | 1.0889 | 2.01 |
| 5200 | 0.8137 | 0.7913 | −2.75 |
| 5240 | 0.7734 | 0.8300 | 7.32 |
| 5280 | 0.9284 | 0.8580 | −7.58 |
| 5330 | 0.8976 | 0.9022 | 0.51 |
| 5345 | 0.9754 | 1.0596 | 8.63 |
| 5360 | 0.9578 | 1.0108 | 5.53 |
| 5380 | 1.3357 | 1.2921 | −3.26 |
| 5483 | 1.2408 | 1.2254 | −1.24 |
| 5523 | 1.1767 | 1.1596 | −1.45 |
| 5560 | 0.9046 | 0.9103 | 0.63 |
| 5600 | 1.4414 | 1.3588 | −5.73 |
| 5640 | 1.1381 | 1.1625 | 2.14 |
| 5660 | 1.1387 | 1.1171 | −1.90 |
| 5720 | 0.8574 | 0.8895 | 3.74 |
| 5775 | 1.5072 | 1.5221 | 0.99 |
| 5790 | 0.9402 | 0.9153 | −2.65 |
| 5800 | 0.9397 | 0.9632 | 2.50 |
| 5880 | 0.8900 | 0.8966 | 0.74 |
| 5910 | 1.0960 | 1.1007 | 0.43 |
| 5920 | 0.9978 | 0.9754 | −2.24 |
| 5945 | 1.1474 | 1.1612 | 1.20 |
| 5960 | 0.9640 | 0.9742 | 1.06 |
| 5990 | 0.8344 | 0.8434 | 1.08 |

| Urban MSA | FY 2003 wage index | CY 2005 wage index | Percent change, FY 2003–CY 2005 |
|---|---|---|---|
| 6015 | 0.8865 | 0.8124 | −8.36 |
| 6020 | 0.8127 | 0.8288 | 1.98 |
| 6080 | 0.8645 | 0.8306 | −3.92 |
| 6120 | 0.8739 | 0.8886 | 1.68 |
| 6160 | 1.0713 | 1.0824 | 1.04 |
| 6200 | 0.9820 | 0.9982 | 1.65 |
| 6240 | 0.7962 | 0.8673 | 8.93 |
| 6280 | 0.9365 | 0.8756 | −6.50 |
| 6323 | 1.0235 | 1.0439 | 1.99 |
| 6340 | 0.9372 | 0.9602 | 2.45 |
| 6360 | 0.5169 | 0.4954 | −4.16 |
| 6403 | 0.9794 | 1.0112 | 3.25 |
| 6440 | 1.0667 | 1.1403 | 6.90 |
| 6483 | 1.0854 | 1.1062 | 1.92 |
| 6520 | 0.9984 | 0.9613 | −3.72 |
| 6560 | 0.8820 | 0.8752 | −0.77 |
| 6580 | 0.9218 | 0.9441 | 2.42 |
| 6600 | 0.9334 | 0.9045 | −3.10 |
| 6640 | 0.9990 | 1.0258 | 2.68 |
| 6660 | 0.8846 | 0.8912 | 0.75 |
| 6680 | 0.9295 | 0.9216 | −0.85 |
| 6690 | 1.1135 | 1.1835 | 6.29 |
| 6720 | 1.0648 | 1.0456 | −1.80 |
| 6740 | 1.1491 | 1.0520 | −8.45 |
| 6760 | 0.9477 | 0.9398 | −0.83 |
| 6780 | 1.1365 | 1.0975 | −3.43 |
| 6800 | 0.8614 | 0.8429 | −2.15 |
| 6820 | 1.2139 | 1.1504 | −5.23 |
| 6840 | 0.9194 | 0.9196 | 0.02 |
| 6880 | 0.9625 | 0.9626 | 0.01 |
| 6895 | 0.9228 | 0.8998 | −2.49 |
| 6920 | 1.1500 | 1.1849 | 3.03 |
| 6960 | 0.9650 | 0.9696 | 0.48 |
| 6980 | 0.9700 | 1.0215 | 5.31 |
| 7000 | 0.8021 | 1.0013 | 24.83 |
| 7040 | 0.8855 | 0.9081 | 2.55 |
| 7080 | 1.0367 | 1.0557 | 1.83 |
| 7120 | 1.4623 | 1.3823 | −5.47 |
| 7160 | 0.9945 | 0.9487 | −4.61 |
| 7200 | 0.8374 | 0.8168 | −2.46 |
| 7240 | 0.8753 | 0.9023 | 3.08 |
| 7320 | 1.1131 | 1.1267 | 1.22 |
| 7360 | 1.4142 | 1.4712 | 4.03 |
| 7400 | 1.4145 | 1.4744 | 4.23 |
| 7440 | 0.4741 | 0.4802 | 1.29 |
| 7460 | 1.1271 | 1.1118 | −1.36 |
| 7480 | 1.0481 | 1.0771 | 2.77 |
| 7485 | 1.3646 | 1.4780 | 8.31 |
| 7490 | 1.0712 | 1.0590 | −1.14 |
| 7500 | 1.3046 | 1.2962 | −0.64 |
| 7510 | 0.9425 | 0.9630 | 2.18 |
| 7520 | 0.9376 | 0.9460 | 0.90 |
| 7560 | 0.8599 | 0.8523 | −0.88 |
| 7600 | 1.1474 | 1.1479 | 0.04 |
| 7610 | 0.7869 | 0.7881 | 0.15 |
| 7620 | 0.8697 | 0.8949 | 2.90 |
| 7640 | 0.9255 | 0.9617 | 3.91 |
| 7680 | 0.8987 | 0.9112 | 1.39 |
| 7720 | 0.9046 | 0.9094 | 0.53 |
| 7760 | 0.9257 | 0.9441 | 1.99 |
| 7800 | 0.9802 | 0.9447 | −3.62 |
| 7840 | 1.0852 | 1.0661 | −1.76 |
| 7880 | 0.8659 | 0.8738 | 0.91 |
| 7920 | 0.8424 | 0.8597 | 2.05 |
| 8003 | 1.0927 | 1.0174 | −6.89 |
| 8050 | 0.8941 | 0.8462 | −5.36 |
| 8080 | 0.8804 | 0.8281 | −5.94 |
| 8120 | 1.0506 | 1.0564 | 0.55 |
| 8140 | 0.8273 | 0.8520 | 2.99 |
| 8160 | 0.9714 | 0.9394 | −3.29 |
| 8200 | 1.0940 | 1.1078 | 1.26 |
| 8240 | 0.8504 | 0.8656 | 1.79 |
| 8280 | 0.9065 | 0.9024 | −0.45 |

| Urban MSA | FY 2003 wage index | CY 2005 wage index | Percent change, FY 2003–CY 2005 |
|---|---|---|---|
| 8320 | 0.8599 | 0.8582 | −0.20 |
| 8360 | 0.8088 | 0.8414 | 4.03 |
| 8400 | 0.9810 | 0.9525 | −2.91 |
| 8440 | 0.9199 | 0.8904 | −3.21 |
| 8480 | 1.0432 | 1.0276 | −1.50 |
| 8520 | 0.8911 | 0.8926 | 0.17 |
| 8560 | 0.8332 | 0.8729 | 4.76 |
| 8600 | 0.8130 | 0.8440 | 3.81 |
| 8640 | 0.9521 | 0.9502 | −0.20 |
| 8680 | 0.8465 | 0.8295 | −2.01 |
| 8720 | 1.3354 | 1.3517 | 1.22 |
| 8735 | 1.1096 | 1.1105 | 0.08 |
| 8750 | 0.8756 | 0.8469 | −3.28 |
| 8760 | 1.0031 | 1.0573 | 5.40 |
| 8780 | 0.9429 | 0.9964 | 5.67 |
| 8800 | 0.8073 | 0.8146 | 0.90 |
| 8840 | 1.0851 | 1.0971 | 1.11 |
| 8920 | 0.8069 | 0.8633 | 6.99 |
| 8940 | 0.9782 | 0.9570 | −2.17 |
| 8960 | 0.9939 | 1.0059 | 1.21 |
| 9000 | 0.7670 | 0.7449 | −2.88 |
| 9040 | 0.9520 | 0.9473 | −0.49 |
| 9080 | 0.8498 | 0.8395 | −1.21 |
| 9140 | 0.8544 | 0.8486 | −0.68 |
| 9160 | 1.1173 | 1.1121 | −0.47 |
| 9200 | 0.9640 | 0.9237 | −4.18 |
| 9260 | 1.0569 | 1.0323 | −2.33 |
| 9270 | 0.9434 | 0.9378 | −0.59 |
| 9280 | 0.9026 | 0.9150 | 1.37 |
| 9320 | 0.9358 | 0.9518 | 1.71 |
| 9340 | 1.0276 | 1.0364 | 0.86 |
| 9360 | 0.8589 | 0.8871 | 3.28 |

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**Friday,**
**October 22, 2004**

## Part III

# Department of Housing and Urban Development

**24 CFR Parts 954 and 1003**

**Participation in HUD's Native American Programs by Religious Organizations; Providing for Equal Treatment of All Program Participants; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 954 and 1003**

**[Docket No. FR–4915–F–02]**

**RIN 2577–AC56**

## Participation in HUD's Native American Programs by Religious Organizations; Providing for Equal Treatment of All Program Participants

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes barriers to the participation of religious (also referred to as ''faith-based'') organizations in HUD regulations implementing the Indian HOME Program, the Indian Community Development Block Grant Program, the Indian Housing Block Grant Program, the Title VI Loan Guarantee Assistance Program, and the Section 184 Loan Guarantees for Indian Housing Program. These changes are consistent with revisions of program regulations undertaken on a department-wide basis. In general, no group of applicants competing for HUD funds or seeking to participate in HUD programs should be subject to greater or fewer requirements than other organizations solely because of their religious character or affiliation or absence of religious character or affiliation. This final rule follows publication of a June 21, 2004, proposed rule and takes into consideration the one public comment received on the proposed rule. After careful consideration of the issues raised by the commenter, HUD has decided to adopt the June 21, 2004, proposed rule without change.

**DATES:** Effective Date: November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ryan Streeter, Director, Center for Faith-Based and Community Initiatives, Department of Housing and Urban Development, Room 10184, 451 Seventh Street, SW., Washington, DC 20410–0001, telephone: (202) 708–2404 (this is not a toll-free number). For program specific information, contact Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Suite 3390, 1919 Broadway, Denver, CO 80202, telephone: (303) 675–1600, extension 3325 (this is not a toll-free number). Individuals with speech or hearing impairments may access these telephone numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On June 21, 2004 (69 FR 34544), HUD published a proposed rule for public comment that removes barriers to the participation of religious (also referred to as ''faith-based'') organizations in HUD regulations for its Native American programs. The proposed rule was published as part of HUD's implementation of the Administration's Faith-Based and Community Initiative. President Bush has directed executive branch agencies, including HUD, to ensure that federal policy and programs are fully open to faith-based and community organizations in a manner consistent with the Constitution. The Administration believes that all eligible organizations, including faith-based organizations, should be able to participate in federal programs and activities and compete, where required, for federal financial assistance on an equal footing.

Consistent with President's Executive Order 13198, ''Agency Responsibilities With Respect to Faith-Based and Community Initiatives,'' issued January 31, 2001 (66 FR 8497), HUD undertook a comprehensive review of its program requirements and regulations, particularly those that would be expected to attract interest and participation by nonprofit organizations. As a result of that comprehensive review, HUD identified regulations that imposed or appeared to impose barriers to the participation of faith-based organizations in eight programs administered by the Office of Community Planning and Development. On January 6, 2003 (68 FR 648), HUD published a proposed rule to eliminate these barriers and to ensure that these HUD programs were open to all qualified organizations, regardless of their religious character. After a period of public comment, HUD finalized this rule on September 30, 2003 (68 FR 56396).

On March 3, 2004 (69 FR 10126), HUD published a second proposed rule to amend its general program requirements at 24 CFR part 5 and extend the equal participation protections to HUD programs and activities not covered by the September 30, 2003, final rule. The March 3, 2004, proposed rule was followed by a final rule published on July 9, 2004 (69 FR 41712), which adopted the proposed rule without change. Neither the September 30, 2003, nor the July 9, 2004, final rules, however, applied to HUD's Native American programs. HUD's Native American programs were excluded from these earlier rules so that HUD could first consult with Indian tribal governments in accordance with Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' issued on November 6, 2000.

Executive Order 13175 requires federal departments and agencies, to the greatest extent practicable and permitted by law, to consult with tribal governments prior to taking actions that have substantial direct effects on federally recognized tribal governments. Accordingly, prior to publication of the June 21, 2004, proposed rule, HUD provided Indian tribes and Alaska Native Villages with the opportunity to comment on the substance of the proposed regulatory changes that would extend the equal participation protections to the Indian HOME Program at 24 CFR part 954; the Indian Housing Block Grant Program (IHBG) at 24 CFR part 1000; the Title VI Loan Guarantee Assistance (Title VI Loan Guarantee) program at subpart E of 24 CFR part 1000; the Indian Community Development Block Grant Program (ICDBG) at 24 CFR part 1003; and the Section 184 Loan Guarantees for Indian Housing Program (Section 184) at 24 CFR part 1005.

## II. This Final Rule

This final rule follows publication of the June 21, 2004, proposed rule and takes into consideration the one public comment received on the proposed rule. After careful consideration of the public comment, HUD has decided to adopt the proposed rule without change. Section IV of this preamble contains a discussion of the one public comment and HUD's responses to the significant issues raised by the commenter.

Of the programs listed above, only the Indian HOME and ICDBG program regulations have sections that specifically address the participation of faith-based organizations. Although the Indian HOME Program was terminated by section 505 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA), the regulation at 24 CFR part 954 continues to govern outstanding funds remaining from that program and part 954 would, accordingly, be amended by this final rule. Specifically, the requirements concerning faith-based organizations at § 954.301 are revised to be parallel to the revision made to § 92.257 of the HOME program regulation by the September 30, 2003, final rule. Similarly, § 1003.600 of the ICDBG regulation is amended to be parallel to the changes made to § 570.200(j) of the Community Development Block Grant (CDBG) program by the September 30, 2003, final rule.

The regulations for the IHBG, Title VI Loan Guarantee, and Section 184 programs do not have sections that specifically address the participation of faith-based organizations. Such organizations could participate in those programs as subrecipients or contractors, as appropriate. This final rule makes the equal participation protections at 24 CFR part 5 established by the July 9, 2004, final rule apply to these Native American programs, as well as to the other HUD programs and activities not covered by the September 30, 2003, final rule. These provisions were originally not made applicable to the IHBG, Title VI Loan Guarantee, and Section 184 programs so that HUD could consult with the affected tribes. Now that consultation has been completed, these provisions of part 5 apply.

## III. Policies and Requirements

The specific policies and requirements that are codified by this final rule, consistent with the September 30, 2003, and July 9, 2004, final rules are as follows:

1. *Equal participation of faith-based organizations in HUD programs and activities.* This final rule clarifies that faith-based organizations are eligible, on the same basis as any other eligible organization, to participate in HUD's programs and activities. The phrase "participate in HUD's programs and activities" and its variants are used in this rule to refer to participation in the full range of HUD programs and activities, including (1) programs that make funds available through contracts, grants, cooperative agreements, or other instruments for eligible goods, services, and activities, and (2) programs that do not make funds available but involve other forms of benefit or resources. For example, the Title VI Loan Guarantee program does not provide funds, but guarantees notes or other obligations issued by Indian tribes to finance affordable housing activities. Neither the federal government, nor a state, local, or tribal government, nor any other entity that administers any HUD program or activity, shall discriminate against an organization on the basis of the organization's religious character or affiliation. Nothing in the rule would preclude those administering HUD-funded programs from accommodating faith-based organizations in a manner consistent with the Establishment Clause of the First Amendment.

2. *Inherently religious activities.* Organizations that receive direct HUD funds under a HUD program or activity may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded under the HUD program or activity. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds, and participation must be voluntary for the beneficiaries of these programs, activities, or services.

As used in this final rule, the term "direct HUD funds" refers to direct funding within the meaning of the Establishment Clause of the First Amendment. For example, direct HUD funding may mean that the government or an intermediate organization with similar duties as a governmental entity under a particular HUD program selects an organization and purchases the needed services straight from the organization (*e.g.,* via a contract or cooperative agreement). In contrast, indirect funding scenarios may place the choice of service provider in the hands of a beneficiary, and then pay for the cost of that service through a voucher, certificate, or other similar means of payment.

3. *Independence of faith-based organizations.* A faith-based organization that participates in a HUD program or activity will retain its independence from federal, state, local, and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services supported by direct HUD funds. Among other things, faith-based organizations may use space in their facilities to provide services under a HUD program, without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program retains authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Exemption from Title VII employment discrimination requirements.* A faith-based organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of applicable requirements.

5. *Nondiscrimination requirements.* This final rule clarifies that an organization that receives direct HUD funds shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Organizations participating in HUD programs and activities must also comply with any other applicable fair housing and nondiscrimination requirements.

6. *Acquisition, construction, and rehabilitation of structures.* HUD funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. Sanctuaries, chapels, and other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, are ineligible for HUD-funded improvements. Disposition of real property after use for the authorized purpose, or any change in use of the property from the authorized purpose, is subject to governmentwide regulations governing real property disposition (*e.g.,* 24 CFR parts 84 and 85).

7. *Commingling of federal and state, local, or tribal funds.* If a state, local, or tribal government voluntarily contributes its own funds to supplement federally funded activities, the state, local, or tribal government may segregate the federal funds or commingle them. However, if the funds are commingled, the policies and requirements of this rule would apply to all of the commingled funds. If a state, local, or tribal government is required to

contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and subject to the requirements of this proposed rule. Some HUD program requirements govern any project or activity assisted under that program. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

**IV. Discussion of the Public Comment on the June 21, 2004, Proposed Rule**

The public comment period on the June 21, 2004, proposed rule closed on August 20, 2004. HUD received one public comment, which came from a civil rights organization. This section of the preamble presents a summary of the significant issues raised by the public commenter and HUD's responses to these issues.

*A. General Comments*

*Comment: Opposition to rule on constitutional grounds.* The commenter expressed concern that the proposed regulatory changes would conflict with the Establishment Clause and related Supreme Court decisions. The commenter wrote that the rule impermissibly would authorize federal funding for churches and other ''pervasively sectarian organizations.'' The commenter was concerned that the regulatory changes ''fail to recognize the unique place that religion has in our society and our constitutional scheme.''

*HUD Response.* HUD does not agree with the commenter. While religious organizations have a unique position in our society and constitutional scheme, HUD does not agree that the unique nature of religious organizations should prevent them from receiving an equal opportunity to participate in federally funded programs, and this rule does not present any violation of the Establishment Clause or Free Exercise Clause.

In addition, the Supreme Court's ''pervasively sectarian'' doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even ''secular'' tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms*, 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case, joined by Justice Breyer, set forth reasoning that is inconsistent with its underlying premises. (*See id.* at 857–858 (O'Connor, J., concurring in judgment) (requiring proof of ''actual diversion of public support to religious uses'').) Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the ''pervasively sectarian'' doctrine. The Department therefore believes that under current precedent, the Department may fund all organizations, without regard to religion and free of criteria that require the provider to abandon its religious expression or character.

As more fully discussed in the responses to the issues below, HUD believes that the policies and procedures contained in this final rule are fully within the bounds of constitutional church-state guidelines and consistent with recent Supreme Court decisions concerning the Establishment Clause.

*Comment: Rule should provide for stricter monitoring and enforcement.* The commenter wrote that the rule fails to provide for any oversight mechanisms or ''firewalls'' to prevent the religious use of government funds. The commenter wrote that such a firewall could best be accomplished by requiring that faith-based organizations establish a separate corporate structure to distinguish a sectarian religious entity from its government-funded social welfare organization.

*HUD Response.* HUD has not revised the rule in response to this comment. HUD has a responsibility to monitor all program participants to ensure that HUD funds are used in accordance with HUD program and any governmentwide requirements. Inappropriate use of HUD funds or failure to comply with HUD requirements is not a possibility that arises only when program participants are faith-based organizations. Failure of any organization receiving federal funds to ensure that the federal portion of their funding is not used for prohibited purposes will subject the organization to the imposition of sanctions or penalties. All HUD program participants must carefully manage their various sources of federal funds and abide by Office of Management and Budget cost accounting circulars, where applicable, or other cost accounting methods that may be specified in individual program regulations. These existing procedures, therefore, more than suffice to address the concerns raised by the commenter.

*Comment: Rule fails to establish adequate safeguards for indirect federal funding of faith-based organizations.* The commenter wrote that the rule lacks regulatory safeguards to ensure that indirect HUD funding to faith-based organizations is not used inappropriately. The commenter wrote that the rule, in effect, establishes a mechanism for the provision of vouchers without meeting the requirements established by the Supreme Court for such programs (*e.g.,* that the program be completely neutral with respect to religion, that use of the vouchers at a religious institution be a wholly genuine and independent private choice, and that the voucher programs not provide incentives to choose a religious institution over a non-religious one, etc.).

*HUD Response.* HUD has not revised the rule in response to this comment. Any HUD-funded program that involves indirect funding must, of course, comply with federal law (including current legal precedent), and nothing in the final regulation provides otherwise. As explained in the preamble of the proposed rule as well as the preamble of this final rule, the term ''direct HUD funds'' refers to direct funding within the meaning of the Establishment Clause of the First Amendment. In other words, HUD's use of the phrase ''direct funding'' in this rule incorporates current First Amendment jurisprudence into its definition. For example, direct HUD funding may mean that the government or an intermediate organization with similar duties as a governmental entity under a particular HUD program selects an organization and purchases the needed services straight from the organization (*e.g.,* via a contract or cooperative agreement). In contrast, indirect funding scenarios may place the choice of service provider in the hands of a beneficiary, and then pay for the cost of that service through a voucher, certificate, or other similar means of payment.

HUD believes that, under current precedent, faith-based organizations that receive HUD funds as the result of the genuine and independent choice of a beneficiary (for example, where the entity administering HUD funds established a voucher, coupon, certificate, or similar funding mechanism) are permitted to offer assistance that integrates religion and social services and requires participation in all aspects of their programs. The religious freedom of beneficiaries in an indirect funding program is protected by the guarantee of genuine and independent private choice. A beneficiary has the right to select any eligible provider, and no beneficiary may be required to receive services from a provider to which the beneficiary has a religious objection. In other words, vouchers for services funded by the government must be available to eligible beneficiaries regardless of their religious belief, and those who object to a religious provider may select an eligible alternative provider.

*Comment: Ensure the availability of secular alternative service providers.* The commenter wrote that HUD should ensure that beneficiaries have the ability to receive services from a different or non-religious provider. The commenter wrote that without reasonable secular alternatives, beneficiaries might be forced to participate in programs provided by faith-based organizations where they may be required to participate in religious activity in order to receive essential government-funded benefits.

*HUD Response.* HUD has not revised the rule in response to this comment. Under this final rule, directly funded faith-based organizations are prohibited from discriminating against program beneficiaries on the basis of ''religion or religious belief.'' In addition, the rule provides that faith-based organizations may not use direct funding from HUD for inherently religious activities, that such activities must be offered separately, in time or location, from services directly funded by HUD, and that no beneficiary served by a HUD-funded provider directly funded by HUD will be required to participate in inherently religious activities as a condition of receiving services. These requirements sufficiently protect the rights of program beneficiaries. Moreover, HUD's general objective is to eliminate barriers to faith-based organizations, to welcome their participation in HUD programs and, most important, to ensure they are treated like other program participants. The commenter's recommendations run counter to the objectives that HUD is trying to achieve through this rule. In light of the restrictions on direct funding outlined above, to prevent a faith-based organization from providing HUD-funded programs or services unless there is a secular organization also providing the same programs or services would defeat the ''neutrality'' objective sought by this rulemaking.

*B. Comments Regarding Inherently Religious Activities*

*Comment: Revise the requirement regarding ''separation in time or location.''* The commenter wrote that the rule fails to mandate the sufficient distance between inherently religious activities and the delivery of programs, activities, or services supported by direct HUD funds. The commenter suggested that HUD revise the rule to provide that religious activities must be separated by both time and location. The commenter also suggested that faith-based organizations be required to explain that participation in religious activities is voluntary at the outset of a beneficiary's receipt of services.

*HUD Response.* HUD declines to adopt the suggestion made by the commenter. HUD believes that requiring that inherently religious activities be separated from HUD-funded activities by both time and location is legally unnecessary. Further, such a requirement would impose an unnecessarily harsh burden on small faith-based organizations that may have access to only one suitable location for the provision of HUD-funded services. HUD does not agree that the separation of time or location requirement is ambiguous or necessitates the need for additional regulation for proper adherence. HUD believes that existing regulations and this rule are clear that faith-based organizations using direct federal funds for certain activities must separate their inherently religious activities from the federally funded activities.

Furthermore, HUD declines to require that religious organizations provide a notice to a beneficiary or potential beneficiary that participation in religious activities was entirely on a voluntary basis. However, grantees are encouraged to take steps to ensure that clients and prospective clients have a clear understanding of the services offered by their organization by explaining the services offered, including any inherently religious activities, as well as the individual's right not to participate in any such activities, while still accepting or receiving services. The requirement that participation be voluntary, however, is sufficient to address concerns about the religious freedom of program beneficiaries.

*Comment: Include a more explicit statement prohibiting faith-based organizations from requiring program beneficiaries to participate in religious activities.* The commenter wrote that HUD should strengthen the provisions of the rule specifying that participation by a beneficiary in religious activities offered by a faith-based service provider be voluntary, and that the faith-based organization may not discriminate against a prospective beneficiary for refusing to participate in such activities. Specifically, the commenter suggested that the regulatory text should be revised to state that a faith-based organization may not discriminate based on ''refusal to participate in or attend a religious practice.''

*HUD Response.* HUD believes that the language in the rule prohibiting faith-based organizations from requiring program beneficiaries to participate in religious activities is sufficiently explicit. A prohibition on discrimination against beneficiaries on the basis of religion or religious belief is straightforward and requires no further elaboration.

*C. Comments Regarding Other Rule Provisions*

*Comment: Concern regarding the Title VII exemption.* The commenter questioned whether a faith-based organization retains its Title VII exemption after receipt of federal funds. The commenters wrote that the exemption from Title VII was never intended to provide the basis for government-funded discrimination, and expressed concern that the rule will result in illegal employment discrimination.

*HUD Response.* As noted above in this preamble, this final rule clarifies that a faith-based organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of Title VII of the Civil Rights Act of 1964, is not forfeited when the organization participates in a HUD program. HUD believes that faith-based organizations should retain their fundamental civil rights, including their ability to take faith into account when they make employment decisions without running afoul of Title VII, when they participate in HUD programs. Title VII recognizes that for a faith-based organization to define or carry out its mission, it is important that it be able to choose its employees based on its vision and beliefs without incurring liability under Title VII. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

*Comment: The proposed rule allows the misuse of HUD funds to build structures used for religious purposes.* The commenter objected to the use of HUD funds in the acquisition, construction, or rehabilitation of religious structures. The commenter wrote that the proposed ''attribution'' requirements would be unenforceable by agencies administering the HUD grant. The commenter offered that, even if the proposed rule could be effectively enforced, it would require such excessive monitoring as to constitute excessive government entanglement with religious institutions. The commenter wrote that HUD should establish effective safeguards to avoid the misuse of HUD funds and prevent the perceived constitutional pitfalls.

*HUD Response.* HUD has not revised the rule in response to these comments. HUD finds no basis for requiring greater oversight and monitoring of faith-based organizations than other program participants simply because they are faith-based organizations. All program participants must be monitored for compliance with program requirements, and no program participant may use HUD funds for any ineligible activity, whether that activity is an inherently religious activity or a nonreligious activity that is outside the scope of the program at issue. Many nonreligious organizations participating in HUD programs also receive funding from several sources (private, state, or local) to carry out activities that are ineligible for funding under HUD programs. In many cases, the non-eligible activities are secular activities but not activities eligible for funding under HUD programs. All program participants receiving funding from various sources and carrying out a wide range of activities must ensure through proper accounting principles that each set of funds is applied only to the activities for which the funding was provided. The regulations for HUD's programs prescribe the cost accounting procedures that are to be followed in using HUD funds.

HUD also does not agree that preventing the use of direct HUD capital-improvement funds for inherently religious activities would necessarily fail or, in the process, excessively entangle the government in the affairs of recipients or subrecipients that are religious organizations. Because inherently religious activities are non-HUD activities, HUD need not distinguish between program participants' religious and nonreligious non-HUD activities; the same mechanism by which HUD polices the line between ineligible and eligible activities will serve to exclude inherently religious activities from funding. This system of monitoring is more than sufficient to address the commenter's concerns, and the amount of oversight of religious organizations necessary to accomplish these purposes is no greater than that involved in other publicly funded programs that the Supreme Court has sustained.

HUD believes that the prorated funding of improvements to a structure that has a mixed use—both religious and nonreligious— is not itself a violation of the Constitution. In a neutral program in which the government directly funds the capital improvements of institutions that administer federal social welfare programs, the government need only put in place safeguards to ensure that public money is not used to finance inherently religious activities. Therefore, the final rule's prohibition on the funding of capital improvements for sanctuaries, chapels, or any other rooms that a HUD-funded religious congregation uses as its principal place of worship simply provides extra assurance that HUD-funded capital improvements will not be used to support inherently religious activities, and HUD's rule is well within the bounds of the Constitution.

*Comment: The rule should prohibit the display of religious art or iconography.* The commenter wrote that the rule fails to recognize that proselytization, religious instruction, and worship can occur through art, icons, and images. Further, the commenter was concerned that the symbols might create a ''pervasively sectarian'' atmosphere in which members of a different religion may not feel comfortable or welcome.

*HUD Response.* HUD declines to impose this restriction on HUD program participants that are faith-based organizations. A number of federal statutes affirm the principle embodied in this rule (*see e.g.*, 42 U.S.C. 290kk–1(d)(2)(B)). For no other program participants do HUD regulations prescribe the type of artwork, statues, or icons that may be placed within the structures in which HUD-funded services are provided. A prohibition on the use of religious icons would make it more difficult for many faith-based organizations to participate in the program than for other organizations and would thus be an inappropriate and excessive restriction.

## V. Findings and Certifications

### *Consultation With Indian Tribal Governments*

In accordance with Executive Order 13175 (entitled ''Consultation and Coordination With Indian Tribal Governments''), issued on November 6, 2000, HUD has consulted with representatives of tribal governments concerning the subject of this rule. HUD, through a letter dated February 23, 2004, provided Indian tribes and Alaska Native Villages the opportunity to comment on the substance of the regulatory changes during the development of the June 21, 2004, proposed rule. HUD considered their comments on the proposed changes in the preparation of the June 21, 2004, proposed rule for publication. Additionally, the June 21, 2004, proposed rule provided Indian tribes with an additional opportunity to comment on the proposed regulatory changes.

### Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandate on any state, local, or tribal governments or the private sector within the meaning of UMRA.

### *Environmental Impact*

This final rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

### *Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the final rule is to ensure the equal participation of faith-based organizations (irrespective of size) in HUD's programs.

### *Catalog of Federal Domestic Assistance Numbers*

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are: Indian Home Program—14.239; ICDBG—14.862;

Section 184—14.865; IHBG—14.867; Title VI Loan Guarantee—14.869.

**List of Subjects**

*24 CFR Part 954*

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 1003*

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends title 24 of the Code of Federal Regulations as follows:

## PART 954—INDIAN HOME PROGRAM

■ 1. The authority citation for 24 CFR part 954 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12701–12839.

■ 2. Revise § 954.301 to read as follows:

### § 954.301 Faith-based activities.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in the Indian HOME program. Neither the federal government nor a tribal government nor any other entity that administers any program or activity under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that receive direct HUD funds under the Indian HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the program or services funded under this part. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds under this part, and participation must be voluntary for the beneficiaries of the programs, activities, or services provided.

(c) A religious organization that participates in the Indian HOME program will retain its independence from federal, state, local, and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a program or activity pursuant to this part. Among other things, religious organizations may use space in their facilities to provide services under the Indian HOME program without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in the Indian HOME program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(e) An organization that receives direct funds under the Indian HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) Indian HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Indian HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Indian HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Indian HOME funds in this part. Sanctuaries, chapels, or other rooms that an Indian HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for Indian HOME-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(g) If a tribal government voluntarily contributes its own funds to supplement federally funded activities, the tribal government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds. Further, if a state or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and therefore subject to the requirements of this section. Some HUD programs requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements

## PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

■ 3. The authority citation for 24 CFR part 1003 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5301 *et seq.*

■ 4. Revise § 1003.600 to read as follows:

### § 1003.600 Faith-based activities.

(a) Religious organizations are eligible, on the same basis as any other eligible organization, to participate in the ICDBG program. Neither the federal government nor a tribal government nor any other entity that administers any program or activity under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that receive direct HUD funds under the ICDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities or services supported by direct HUD funds under this part, and participation must be voluntary for the beneficiaries of the programs, activities, or services provided.

(c) A religious organization that participates in the ICDBG program will retain its independence from federal, state, local, and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a program or activity pursuant to this part. Among other things, religious organizations may use space in their facilities to provide ICDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in the ICDBG program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(e) An organization that receives direct funds under the ICDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) ICDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. ICDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, ICDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ICDBG funds in this part. Sanctuaries, chapels, or other rooms that an ICDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for ICDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(g) If a tribal government voluntarily contributes its own funds to supplement federally funded activities, the tribal government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds. Further, if a state or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and therefore subject to the requirements of this section. Some HUD programs requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

Dated: October 18, 2004.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 04–23666 Filed 10–19–04; 12:06 pm]

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Federal Register

**Friday,**

**October 22, 2004**

## Part IV

# Department of Housing and Urban Development

**24 CFR Part 7**

**Update to Equal Employment Opportunity Policy; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 7**

**[Docket No. FR 4929–F–01]**

**RIN 2501–AD04**

## Update to Equal Employment Opportunity Policy

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule updates HUD's regulations that govern equal employment opportunity to make HUD's requirements for equal employment opportunity plans consistent with a recently issued Equal Employment Opportunity Commission (EEOC) management directive.

**DATES:** *Effective Date:* November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Linda Bradford-Washington, Acting Director, Office of Departmental Equal Employment Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3362 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** HUD's regulations governing the Department's equal employment opportunity (EEO) policies, procedures, and programs are located at 24 CFR part 7. This final rule revises and updates the Department's current EEO regulations that concern equal employment opportunity plans. This regulatory change will make HUD's EEO provisions at 24 CFR part 7 consistent with the recently issued EEOC governmentwide management directive (MD–715, effective October 1, 2003). This final rule also makes conforming changes to part 7 to remove obsolete terms.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–17) and the Rehabilitation Act of 1973 (29 U.S.C. 791 *et seq.*) mandate that all federal personnel decisions be made free of discrimination on the basis of race, color, religion, sex, national origin, reprisal, or disability. The statutes also require that federal agencies establish a program of equal employment opportunity for all federal employees and job applicants. MD–715 provides policy guidance and standards for federal agencies in establishing and maintaining effective affirmative programs of equal employment opportunity. The directive places responsibility on agency heads to provide current guidance for the development of program plans for all components, establish agencywide objectives, develop and submit program plans, and prepare accomplishment reports and plan updates for timely submission to EEOC.

This final rule revises 24 CFR part 7 to make HUD's EEO policies consistent with MD–715. The new directive no longer requires federal agencies to submit data, accomplishment reports, or plans concerning the under-representation of women and minorities. Accordingly, HUD is removing from 24 CFR 7.4, any reference to such requirement. In addition, the directive no longer uses the terms ''affirmative employment'' or ''AE'' in reference to the plans that federal agencies are required to submit to EEOC. Therefore, this final rule removes all references to ''affirmative employment'' and ''AE.''

### Findings and Certifications

*Justification for Final Rulemaking*

HUD's regulations at 24 CFR 10.1 state that notice and public procedure may be omitted with respect to statements of policy, interpretative rules, rules governing the Department's organization or its own internal practices or procedures. This rule is limited to updating the Department's internal procedures as described in the regulations at 24 CFR part 7, to reflect current practices.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes changes to regulations that affect only the Department's own internal procedures and will not have any effect on small entities.

*Environmental Impact*

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Other Matters*

Because this rule is limited to internal agency practices and procedures, this rule does not impose unfunded mandates within the meaning of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) or have federalism implications within the meaning of Executive Order 13132 (Federalism).

### List of Subjects in 24 CFR Part 7

Administrative practice and procedure, Equal employment opportunity, Organization and functions (Government agencies).

■ For the reasons stated in the preamble, HUD amends 24 CFR part 7 as follows:

## PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY, PROCEDURES AND PROGRAMS

■ 1. The authority citation for 24 CFR part 7 continues to read as follows:

**Authority:** 29 U.S.C. 206(d), 633a, 791 and 794; 42 U.S.C. 2000e note, 2000e–16, 42 U.S.C. 3535(d); E.O. 11478 of Aug. 8, 1969; 34 FR 19285, Aug. 12, 1969; E.O. 10577, 3 CFR 1954–1958; E.O. 11222, 3 CFR 1964–1965.

■ 2. Revise § 7.1 to read as follows:

**§ 7.1 Policy.**

The Department's equal employment opportunity policy conforms with the policies expressed in Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4); the Civil Rights Act of 1991 (Pub. L. 102–166, approved November 21, 1991); Executive Order 11478 of 1969 (34 FR 12985, 3 CFR 1966–1970 Comp., p. 803); the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. 621 *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206d); sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794); the Civil Service Reform Act of 1978 (5 U.S.C. 1101 *et seq.*); Executive Order 13087 of 1998 (63 FR 30097); and the EEOC's implementing regulations, codified at 29 CFR part 1614. It is HUD's policy to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, or disability in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with current or former employees and applicants for employment; to prohibit discrimination against any employee because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning an equal employment opportunity complaint; and to promote the full realization of equal opportunity in employment through continuing programs of equal employment opportunity at every level within the Department. Procedures for filing EEO claims are found in the EEOC regulations at 29 CFR part 1614. HUD is committed to promoting equal employment opportunity through the removal of barriers and by positive actions at every level, including the early resolution of EEO disputes.

■ 3. In § 7.2, remove the definition of ''AE'' and revise the definition of ''EEO Officer Pro Tem'' to read as follows:

**§ 7.2 Definitions.**

* * * * *

*EEO Officer Pro Tem* means the Chief of Staff or an official at a neutral federal agency designated to process an EEO claim that would be a conflict of interest for the Director of EEO or the Deputy Director of EEO or both. EEO Officer Pro Tem also refers to the Assistant Secretary or the Assistant Secretary-comparable designated by the Director of EEO to serve as the EEO Officer for an EEO claim that would be a conflict of interest for a responding Assistant Secretary or Assistant Secretary-comparable.

* * * * *

■ 4. Revise § 7.4 to read as follows:

**§ 7.4 Equal employment opportunity programs.**

The Secretary, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the Chief Financial Officer, the Director of Healthy Homes and Lead Hazard Control, the Director of the Office of Departmental Operations and Coordination, and other HUD officials who may be determined by the Secretary for purposes of this part to be comparable to an Assistant Secretary, shall establish, maintain, and carry out a plan of equal employment opportunity to promote equal opportunity in every aspect of employment policy and practice. Each plan must be consistent with 29 CFR part 1614 and EEOC Management Directive 715. A copy of the EEOC Management Directive 715 is available at *http://www.eeoc.gov.*

■ 5. In § 7.10, revise paragraphs (a), (b), (c), and (e) to read as follows:

**§ 7.10 Responsibilities of the Director of EEO.**

* * * * *

(a) Advising the Secretary with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the government's equal employment opportunity policy and the Department's EEO/ADR programs;

(b) Developing and maintaining plans, procedures, and regulations necessary to carry out the Department's EEO programs;

(c) Evaluating, at least annually, the sufficiency of each organizational unit's EEO/ADR program and providing reports thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;

* * * * *

(e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO/ADR programs;

* * * * *

■ 6. In § 7.11, revise paragraphs (a), (b), (c), (g), and (j) to read as follows:

**§ 7.11 Responsibilities of the EEO Officers.**

* * * * *

(a) Advising the Director of EEO on matters affecting the implementation of the Department's EEO/ADR policies and programs in the organizational unit;

(b) Developing and maintaining a program of equal employment opportunity for the organizational unit and ensuring that the program is carried out in an exemplary manner;

(c) Publicizing to all employees of the organizational unit the name and address of the Director of EEO, the EEO Officer(s), and the EEO Counselor(s), the EEO Discrimination Complaint Manager(s), the Diversity Program Manager, ADR Officials, and the EEO complaint procedures;

* * * * *

(g) Designating a senior-level manager in Headquarters responsible for providing advice and guidance to managers and supervisors in removing barriers to EEO/ADR and in implementing all of their EEO responsibilities; and reviewing recruitment and personnel actions taken by managers and supervisors to ensure the achievement of EEO standards;

* * * * *

(j) Ensuring the successful operation of the EEO/ADR Program by requiring management's support;

* * * * *

■ 7. In § 7.13, paragraphs (a), (g), and (i) are revised to read as follows:

**§ 7.13 Responsibilities of the Assistant Secretary for Administration.**

* * * * *

(a) Provide leadership in developing and maintaining personnel management policies, programs, automated systems, and procedures that will promote and ensure equal opportunity in the recruitment, selection, placement, training, awards, recognition, and promotion of employees, including an applicant flow tracking system to track information reflecting characteristics of the pool of individuals applying for an employment opportunity.

* * * * *

(g) Designate a senior-level Disability Program Manager to promote EEO/ADR for persons with disabilities; to assure the accessibility of all HUD facilities and programs; and to manage the resources for providing reasonable accommodation;

* * * * *

(i) Provide and coordinate mandatory supervisors' and managers' EEO/ADR training;

* * * * *

■ 8. In § 7.14, revise paragraphs (e), (g), (h)(4), (i), and (l) to read as follows:

**§ 7.14 Responsibilities of the Office of Human Resources.**

* * * * *

(e) Ensure that new employee orientation programs contain appropriate references to the Department's EEO/ADR policies, procedures, and programs and accomplishment of EEO standards under the Department's Performance Accountability and Communications System (PACS), or other Departmental performance appraisal system;

* * * * *

(g) In coordination with the HUD official charged with training responsibilities, develop an ongoing training program for supervisors and managers to ensure understanding of the Departmental EEO/ADR programs, policies, and other requirements that foster effective teamwork and high morale;

(h) * * *

(4) EEOC's regulations and policy guidance concerning EEO and ADR;

* * * * *

(i) In coordination with the HUD official charged with training responsibilities, the Office of General Counsel, the Office of Administration, and the Director of EEO, the Department may enter into agreements to have EEO/ADR mandatory annual supervisory and management training provided by other federal agencies or other resources;

* * * * *

(l) Track applicant flow data that reflects characteristics of the pool of individuals applying for an employment opportunity and promptly take or recommend appropriate action to overcome any impediment to achieving the standards of the EEO/ADR programs and accomplishing the EEO standards under the applicable HUD performance appraisal system;

* * * * *

■ 9. In § 7.15, revise paragraphs (a), (b), and (f) to read as follows:

### § 7.15 Responsibilities of managers and supervisors.

* * * * *

(a) Removing barriers to EEO and ensuring that EEO standards are accomplished in their areas of responsibility;

(b) Evaluating and documenting subordinate managers and supervisors on their performance of EEO/ADR responsibilities;

* * * * *

(f) Being proactive in addressing EEO/ADR issues, and maintaining work environments that encourage and support complaint avoidance through sound management and personnel practices;

* * * * *

■ 10. In § 7.16, revise paragraphs (a) and (d) to read as follows:

### § 7.16 Responsibilities of employees.

* * * * *

(a) Being informed as to the Department's EEO/ADR programs;

* * * * *

(d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO/ADR programs; and

* * * * *

■ 11. Revise § 7.45(a) to read as follows:

### § 7.45 EEO group statistics and reports.

(a) The Department shall establish a system to collect and maintain accurate employment information on the race, national origin, sex, and disability of all its employees and applicants in accordance with 29 CFR 1614.601 through 29 CFR 1614.602, and the Department shall report to the EEOC on employment by race, national origin, sex, and disability, in the form and at such times as the EEOC may require.

* * * * *

Dated: October 18, 2004.

**Alphonso Jackson,**

*Secretary.*

[FR Doc. 04–23685 Filed 10–21–04; 8:45 am]

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# Reader Aids

**Federal Register**

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  Tuberculosis in cattle; import requirements; comments due by 10-25-04; published 8-24-04 [FR 04-19313]

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Alaska Native Allotment Subdivision Act (Oct. 18, 2004; 118 Stat. 1357)

**S. 1537/P.L. 108–338**

To direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery. (Oct. 18, 2004; 118 Stat. 1359)

**S. 1663/P.L. 108–339**

To replace certain Coastal Barrier Resources System maps. (Oct. 18, 2004; 118 Stat. 1361)

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**S. 1814/P.L. 108–341**

To transfer Federal lands between the Secretary of Agriculture and the Secretary of the Interior. (Oct. 18, 2004; 118 Stat. 1364)

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To revise and extend the Boys and Girls Clubs of America. (Oct. 18, 2004; 118 Stat. 1376)

**S. 2508/P.L. 108–345**

To redesignate the Ridges Basin Reservoir, Colorado, as Lake Nighthorse. (Oct. 18, 2004; 118 Stat. 1378)

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Belarus Democracy Act of 2004 (Oct. 20, 2004; 118 Stat. 1383)

**S. 2895/P.L. 108–348**

To authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights in honor of breast cancer awareness month. (Oct. 20, 2004; 118 Stat. 1388)

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