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Contents

Federal Register

Vol. 69, No. 208

Thursday, October 28, 2004

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Technical Review Committee, 62900

Agricultural Marketing Service
PROPOSED RULES
Olives grown in—
California, 62829–62831

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Grain Inspection, Packers and Stockyards Administration
See Rural Housing Service
See Rural Telephone Bank

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, foreign:
Import regulations; requests for changes; submission requirements, 62823–62829

Army Department
See Engineers Corps

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62900–62901

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62901

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commission on Review of Overseas Military Facility Structure of the United States
NOTICES
Meetings, 62873

Community Development Financial Institutions Fund
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62934

Defense Department
See Engineers Corps

Employment and Training Administration
NOTICES
Labor surplus areas classification:
Annual list, 63011–63033

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Clear and West Forks of the Trinity River in Fort Worth, Tarrant County, TX; correction, 62941

Environmental Protection Agency
NOTICES
Committees; establishment, renewal, termination, etc.:
Clean Air Act Advisory Committee, 62881–62882

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airmen certification:
Picture identification requirements; correction, 62809–62810
Airworthiness directives:
Boeing, 62803–62805
Bombardier, 62807–62809
Dornier, 62805–62806
PROPOSED RULES
VOR Federal airways, 62832–62833
NOTICES
Exemption petitions; summary and disposition, 62929–62930
Correction, 62930

Federal Communications Commission
RULES
Common carrier services:
Telecommunications carriers' use of customer proprietary network and other information, 62811–62816
Telephone Consumer Protection Act; implementation—
Do-Not-Call Implementation Act; unwanted telephone solicitations, 62816–62817
Digital television stations; table of assignments:
Wisconsin, 62817
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62882–62884
Common carrier services:
Wireless telecommunications services—
Broadband PCS spectrum auction, 62884–62896

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Apples
Correction, 62803

Federal Emergency Management Agency
NOTICES
Committees; establishment, renewal, termination, etc.:
U.S. Fire Administration Policy and Program Advisory Board, 62907–62908

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Central Vermont Public Service Corp., 62877–62878

Hydroelectric applications, 62878–62881
Meetings:
Southern Natural Gas Co.; technical conference, 62881
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission, LLC, 62873–62874
Boston Edison Co., et al., 62874
Dominion Transmission, Inc., 62874–62875
Florida Gas Transmission Co., 62875
Natural Gas Pipeline Co. of America, 62875
Northwest Pipeline Corp., 62876
Texas Eastern Transmission, LP, 62876–62877
Wyoming Interstate Co., Ltd., 62877

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 62916–62917

Federal Railroad Administration
RULES
Railroad safety:
Laws and regulations violation; civil monetary penalties; inflation adjustment
Correction, 62817–62818

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62896–62897
Banks and bank holding companies:
Change in bank control, 62897
Formations, acquisitions, and mergers, 62897–62898
Permissible nonbanking activities, 62898

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Mariana fruit bat, etc., from Guam and Northern Mariana Islands, 62943–62990
NOTICES
Endangered and threatened species and marine mammal permit applications, 62914–62915
Endangered and threatened species permit applications, 62915

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Ridley U.S. Holdings, Inc., 62810–62811
Organization, functions, and authority delegations:
Biological Response Modifiers Advisory Committee; name change to Cellular, Tissue and Gene Therapies Advisory Committee and function change, 62810
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62901–62902
Meetings:
Reproductive Health Drugs Advisory Committee, 62902
Reports and guidance documents; availability, etc.:
Nucleic acid tests use on samples from donors of whole blood and blood components to reduce risk of transmission of HIV-I and HVC, 62902–62903
Oxygen therapeutics as red blood cell substitutes; safety and efficacy evaluation criteria, 62903–62904

General Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62898–62899
Privacy Act:
Systems of records, 62899–62900

Grain Inspection, Packers and Stockyards Administration
NOTICES
Meetings:
Grain Inspection Advisory Committee, 62847

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service

Health Resources and Services Administration
NOTICES
Meetings:
Migrant Health National Advisory Council, 62904

Homeland Security Department
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62909–62911
Regulatory waiver requests; quarterly listing, 62991–63010
Submission for OMB review; comment request, 62911–62913

Interior Department
See Fish and Wildlife Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Trinity River Adaptive Management Working Group, 62913–62914

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 62935

International Trade Administration
NOTICES
Antidumping:
Bottle-grade polyethylene terephthalate (PET) resin from—
India, 62856–62861
Indonesia, 62861–62866
Thailand, 62850–62856
Hot-rolled flat-rolled carbon quality steel products from—
Brazil, 62866–62867
Low enriched uranium from—
France, 62867
Polyethylene terephthalate (PET) resin from—
Taiwan, 62868–62871
Countervailing duties:
Stainless steel plate in coils from—
Belgium, 62871
Stainless steel sheet and strip in coils from—
Italy, 62872

International Trade Commission
NOTICES
Import investigations:
Light-walled rectangular pipe and tube from—
Mexico and Turkey, 62916

Justice Department
NOTICES
Pollution control; consent judgments:
CITGO Petroleum Corp., 62916

Labor Department
See Employment and Training Administration

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Mississippi River Commission
NOTICES
Meetings; Sunshine Act, 62917

National Council on Disability
NOTICES
Meetings; Sunshine Act, 62917

National Institute of Standards and Technology
NOTICES
Meetings:
Malcolm Baldrige National Quality Award—
Panel of Judges, 62872

National Institutes of Health
NOTICES
Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 62905–62906
National Institute of Mental Health, 62904–62905

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 62818
Northeastern United States fisheries—
Summer flounder, scup, and black sea bass, 62818–62822
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies, 62844–62846
NOTICES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic surfclam and ocean quahog, 62872–62873
Reports and guidance documents; availability, etc.:
Integrated Ocean Observing System Development Plan, 62873

National Science Foundation
NOTICES
Meetings:
Engineering Advisory Committee, 62917

Nuclear Regulatory Commission
PROPOSED RULES
Byproduct material; medical use:
Authorized nuclear pharmacist and user qualification; training and experience requirements; rulemaking petition, 62831–62832

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 62917–62918

Presidential Documents
ADMINISTRATIVE ORDERS
Albania; use of Cooperative Threat Reduction funds (Presidential Determination 2005-04 of October 20, 2004), 63035–63037
Sudan; delegation of functions related to the Sudan Peace Act (Memorandum of October 21, 2004), 63039

Public Health Service
NOTICES
National Toxicology Program:
Center for Evaluation of Risks to Human Reproduction—
Amphetamines and methylphenidate; expert panel meeting and reports; comment request, 62906–62907

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline safety—
Enhancing integrity management of gas distribution pipelines et al., 62930–62934

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Section 516 farm labor housing construction or repair and emergency services assistance to low-income migrant and seasonal farmworkers, 62847–62850

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 62850

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
American Family Life insurance Co., et al., 62918–62920
Joint industry plan:
International Securities Exchange, Inc., et al., 62920–62921
Public Utility Holding Company Act of 1935 filings, 62921–62924
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., et al., 62925–62926
National Association of Securities Dealers, Inc., 62926–62928
Pacific Exchange, Inc., 62928–62929

State Department
NOTICES
Art objects; importation for exhibition:
Hero, Hawk, and Open Hand: American Indian Art of the Ancient Midwest and South, 62929

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Research and Special Programs Administration
PROPOSED RULES
Economic regulations:
Commuter air carrier registrations; elimination, 62833–62844

Treasury Department
See Community Development Financial Institutions Fund
See Internal Revenue Service

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 62935

Veterans Affairs Department
NOTICES
Meetings:
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, 62935–62936
Privacy Act:
Systems of records, 62936–62940

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 62943–62990

Part III
Housing and Urban Development Department, 62991–63010

Part IV
Labor Department, Employment and Training Administration, 63011–63033

Part V
Executive Office of the President, Presidential Documents, 63035–63037, 63039

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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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.

3 CFR

Administrative Orders:

Memorandums:

Memorandum of October 21, 2004 63039

Presidential Determinations:

No. 2005–04 of October 20, 2004 63037

7 CFR

457 62803

Proposed Rules:

319 62823

932 62829

10 CFR

Proposed Rules:

35 62831

14 CFR

39 (3 documents) 62803, 62805, 62807

61 62809

Proposed Rules:

71 62832

201 62833

203 62833

205 62833

215 62833

298 62833

380 62833

385 62833

389 62833

21 CFR

14 62810

510 62810

520 62810

47 CFR

64 (2 documents) 62811, 62816

73 62817

49 CFR

221 62817

235 62817

50 CFR

17 62944

622 62818

648 62818

Proposed Rules:

648 62844

Rules and Regulations

Federal Register
Vol. 69, No. 208
Thursday, October 28, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB92

Common Crop Insurance Regulations, Apple Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The document contains a correction to the final regulation which was published Friday, August 27, 2004 (69 FR 52583–52594). The regulation pertains to the insurance of apples.

EFFECTIVE DATE: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Risk Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 426, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and include the apple crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

Need For Correction

As published, the final regulation contained errors which may prove to be misleading and need to be clarified.

Correction of Publication

■ Accordingly, the publication on August 27, 2004, of the final regulation at 69 FR 52583–52594 is corrected as follows:

PART 457—[CORRECTED]

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

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

■ 2. Amend § 457.158 as follows:

■ a. In section 2, remove the paragraph (a) designation, and redesignate paragraphs (1) and (2) as paragraphs (a) and (b);

■ b. In section 10(a)(7), add the word ''the'' between the words ''of'' and ''irrigation'';

■ c. In section 11(c), remove the phrase ''include it'' and insert the word ''included'' in its place;

■ d. In section 12(a), remove the comma after the word ''event'';

■ e. In section 14(b)(5)(v), revise the citation ''14(b)(i)'' to read 14(b)(5)(i);

■ f. In the example in section 14, the last sentence after the word ''option'' is corrected to add as a separate paragraph leading into the example of the Optional Coverage for Fresh Fruit Quality Adjustment.

■ g. In the example in section 14, section B is amended by removing the semicolon after the word ''apples'';

■ h. In the example in section 14, section D is amended by revising section vii and adding a new section viii to read as set forth below; and

■ i. In the example in section 14, sections E, F, and G are revised to read as set forth below.

The revisions and additions read as follows:

§ 457.158 Apple crop insurance provisions.

* * * * *

14. Optional Coverage for Fresh Fruit Quality Adjustment.

* * * * *

D. * * *

vii. 5,000 bushels of apples that graded U.S. No. 1 or better minus 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of fresh apple production to count.

viii. 1,950 bushels of fresh apples production to count × $9.10 = $17,745.00 value of the fresh apple production to count; 1,000 bushels of harvested marketable processing apple production to count × $4.76 price election = $4,760.00 value of the processing apple production to count;

E. $17,745.00 value of the fresh apple production to count + $4,760.00 value of the processing apple production to count = $22,505.00 total value of production to count;

F. $68,880.00 total value of guarantee for all apple acreage − $22,505.00 total value of production to count = $46,375.00 value of loss; and

G. $46,375.00 value of loss × 100 percent share = $46,375.00 indemnity payment.

* * * * *

Signed in Washington, DC on October 19, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–23982 Filed 10–27–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–173–AD; Amendment 39–13832; AD 2004–22–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes Equipped With General Electric (GE) or Pratt & Whitney (P&W) Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes, equipped with GE or P&W series engines. This amendment requires modifications and functional tests of the wiring of the wire integration unit and the air supply control test unit (ASCTU) of the engine bleed air distribution system. The actions specified by this AD are intended to prevent inadvertent commanded shutdown of the engine bleed air distribution systems due to an erroneous ASCTU command. This type of shutdown could cause depressurization of the airplane and subsequent ice build-up on the engine inlets during descent, which could result in ingestion of ice into the

engine(s) and consequent loss of thrust on one or more engines. This action is intended to address the identified unsafe condition.

DATES: Effective December 2, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of December 2, 2004.

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

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes, equipped with GE or P&W series engines, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 16, 2004 (69 FR 50341). That action proposed to require modifications and functional tests of the wiring of the wire integration unit and the air supply control test unit of the engine bleed air distribution system.

Comments

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

Conclusion

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

Cost Impact

There are approximately 414 airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will be minimal. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $36,400, or $520 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–22–04 Boeing: Amendment 39–13832. Docket 2002–NM–173–AD.

Applicability: Model 747–400, –400D, and –400F series airplanes; as listed in Boeing Service Bulletin 747–36A2136, Revision 2, dated May 13, 2004; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent commanded shutdown of the engine bleed air distribution systems due to an erroneous air supply control test unit (ASCTU) command, which could cause depressurization of the airplane and subsequent ice build-up on the engine inlets during descent, which could result in ingestion of ice into the engine(s) and consequent loss of thrust on one or more engines; accomplish the following:

Modifications/Tests

(a) Within 18 months after the effective date of this AD: Do the modifications and functional tests of the wiring of the wire integration unit (WIU) and the ASCTU of the engine bleed air distribution system specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–36A2136, Revision 2, dated May 13, 2004. Before further flight after accomplishing paragraphs (a)(2), (a)(3), and (a)(4) of this AD: Do the post-installation tests in accordance with the service bulletin.

(1) Remove the existing ASCTU.

(2) Do the wiring changes between the WIU and ASCTU and the wiring changes to the WIU.

(3) Do the resistance tests.

(4) Install a new or reworked ASCTU.

Credit for Previous Issues of Boeing Service Bulletin

(b) Modifications and tests accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–36A2136, dated April 12, 2001; or Revision 1, dated January 17, 2002; are considered acceptable for compliance with the corresponding actions specified in paragraph (a) of this AD, if the resistance tests were done with the ASCTU removed. If the resistance tests were done with the ASCTU installed, do the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, at the time specified in paragraph (a) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–36A2136, Revision 2, dated May 13, 2004. Before further flight after accomplishing paragraph (b)(3) of this AD: Do the post-installation tests in accordance with the service bulletin.

(1) Remove the existing ASCTU.

(2) Do the resistance tests.
(3) Reinstall the ASCTU.

Part Installation

(c) As of the effective date of this AD, no person may install on any airplane an ASCTU having a part number listed in the ''Old Part Number'' column in the table specified in paragraph 3.C. of the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 36–186, dated March 30, 2001.

Alternative Methods of Compliance (AMOCs)

(d) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–36A2136, Revision 2, dated May 13, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Effective Date

(f) This amendment becomes effective on December 2, 2004.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24030 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–310–AD; Amendment 39–13834; AD 2004–22–06]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 and –300 series airplanes, that requires inspection of the metal oxide varistor (MOV) modules and transient absorption zener (TAZ) diodes to determine if those parts are outside of tolerance limits, and replacement of MOV modules and TAZ diodes with new parts, if necessary. This action is necessary to prevent the failure of critical ice protection systems following a lightning strike, which could result in reduced controllability and degraded performance of the airplane in the event of an encounter with icing conditions. This action is intended to address the identified unsafe condition.

DATES: Effective December 2, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 2004.

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

FOR FURTHER INFORMATION CONTACT: Thomas Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes was published in the **Federal Register** on February 26, 2004 (69 FR 8878). That action proposed to require inspection of the metal oxide varistor (MOV) modules and transient absorption zener (TAZ) diodes to determine if those parts are outside of tolerance limits, and replacement of MOV modules and TAZ diodes with new parts, if necessary.

Comments

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

Request To Withdraw the Notice of Proposed Rulemaking (NPRM)

One commenter believes that the AD is unwarranted. The commenter notes that Discussion section of the NPRM states, ''Further investigation revealed that the airplane maintenance manual (AMM) does not include a check of this equipment following a lightning strike.'' The commenter points out that in Volume 1 of the AMM, Description and Operation, Section 05–51–02, ''Lightning Strike,'' page 3, Sections C and D, dated September 3, 2003, it states, ''After a lightning strike you must do the respective functional tests at all TAZ diodes and MOV modues or you can replace them directly without a functional test.'' From these comments, the FAA infers that the commenter is requesting that the NPRM be withdrawn.

We do not agree with the request to withdraw the NPRM. The commenter is correct in that the AMM has been updated to include instructions for checking the TAZ diodes and MOV modules following a lightning strike. However, as stated in the Discussion section of the NPRM, 37% of the inspected fleet has been found with TAZ diodes and MOV modules that are out of tolerance. The AD was written to determine if any pre-existing damage to the TAZ diodes or MOV modules exist. The out of tolerance condition, if not corrected, could result in the failure of critical ice protection system following a lightning strike, which could result in reduced controllability and degraded performance of the airplane in an event of an encounter with icing condition. We have determined that this AD action addresses the identified unsafe condition, and issuance of the final rule is necessary.

Request To Include Additional Costs

The same commenter states that the Cost Impact section of the NPRM is understated. The commenter contends that it does not take into account the $2,731 procurement cost of the high voltage test unit, part number (P/N) 771–9–001, necessary to test the TAZ diodes and MOV modules, and the yearly $148.50 calibration cost. From this comment, we infer that the commenter is requesting a change to the Cost Impact section to account for the cost of special test equipment.

We agree that a change to the Cost Impact section is needed. We have confirmed that a special tool is necessary to perform the inspection required by this AD, and have revised

the Cost Impact section of the final rule to include that cost.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 53 Model 328–100 series airplanes (4 operators) and 48 Model 328–300 series airplanes (8 operators) of U.S. registry will be affected by this AD.

For Model 328–100 series airplanes, it will take approximately 6 work hours per airplane to accomplish the required inspection, at an average labor rate of $65 per work hour. The special tool necessary to accomplish the required inspection will cost approximately $2,731 per operator. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $31,594.

For Model 328–300 series airplanes, it will take approximately 3 work hours per airplane to accomplish the required inspection, at an average labor rate of $65 per work hour. The special tool necessary to accomplish the required inspection will cost approximately $2,731 per operator. Based on these figures, the cost impact of the AD on U.S. operators of these planes is estimated to be $31,208.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–22–06 Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Amendment 39–13834. Docket 2002–NM–310–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3119 inclusive; and Model 328–300 series airplanes, serial numbers 3105 through 3207 inclusive, except serial numbers 3199, 3200, 3203, and 3204; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of critical ice protection systems following a lightning strike, which could result in reduced controllability and degraded performance of the airplane in the event of an encounter with icing conditions, accomplish the following:

Inspection and Replacement

(a) Within 90 days after the effective date of this AD, inspect transient absorption zener (TAZ) diodes and metal oxide varistor (MOV) modules to determine if those parts are outside of tolerance limits, in accordance with the Accomplishment Instructions of Dornier Service Bulletins SB–328–30–417, dated January 24, 2002 (for Model 328–100 series airplanes); or SB–328J–30–150, dated January 24, 2002 (for Model 328–300 series airplanes); as applicable. If any TAZ diode or MOV module is found to be outside of tolerance, before further flight, replace the faulty part with a new part in accordance with the Accomplishment Instructions of the applicable service bulletin.

Reporting Difference

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

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–114, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328–30–417, dated January 24, 2002; or Dornier Service Bulletin SB–328J–30–150, dated January 24, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in German airworthiness directives 2002–262 and 2002–263, both dated September 19, 2002.

Effective Date

(e) This amendment becomes effective on December 2, 2004.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24029 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–158–AD; Amendment 39–13836; AD 2004–22–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that requires repetitive inspections of the check valves and air supply ducts of the rear bulkhead for damage, and related corrective actions. This amendment also would require eventual rework or replacement of the air supply ducts, which would terminate the repetitive inspections for the air supply ducts only. This action is necessary to prevent disconnection of an air supply duct, which, if combined with failure of a bulkhead check valve, could result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 2, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Dan Parillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, suite 410, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes was published in the **Federal Register** on June 2, 2004 (69 FR 31047). That action proposed to require repetitive inspections of the check valves and air supply ducts of the rear bulkhead for damage, and related corrective actions. That action also proposed to require eventual rework or replacement of the air supply ducts, which would terminate the repetitive inspections for the air supply ducts only.

Comments

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

Requests To Change Applicability

One commenter does not fully agree with the applicability specified in the proposed AD, and asks that it be changed. The commenter states that, although all airplanes having bulkhead check valves with part number (P/N) 92E20–3/–4 should be inspected, the inspection of the air supply ducts required by paragraph (b)(2) of the proposed AD should not be for all airplanes. The commenter notes that the effectivity range for airplanes specified in Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003 (Rework or Installation of New Air Supply Ducts), identifies serial numbers 7003 through 7067, and 7069 through 7477. The commenter adds that airplanes having serial numbers 7478 and subsequent were modified before delivery by installing new air supply ducts, as specified in Service Bulletin A601R–21–053, Revision 'A.' The commenter concludes that the difficulty with the applicability in this proposed AD comes from combining two service bulletins in one AD, when the effectivity specified in those service bulletins is different. The commenter includes two suggestions for changing the applicability section in the proposed AD:

1. All Bombardier Model CL–600–2B19 airplanes pre-mod 601R–21–053, Part B, Part C, or TC601R15375 (air supply duct inspection); or

2. All Bombardier Model CL–600–2B19 airplanes fitted with check valves having P/N 92E20–3/–4 (check valve inspection).

A second commenter also asks that the applicability be changed and states that the inspections and any necessary rework or replacement of the air supply ducts be limited to airplanes listed in Service Bulletin A601R–21–053, Revision 'A,' as specified above. The commenter notes that this modification will be incorporated before delivery on airplanes having serial numbers 7478 and subsequent. The commenter operates airplanes having serial numbers 7482 and 7483 which were previously modified. The commenter asks that the final rule contain an effectivity range as listed in Service Bulletin A601R–21–053, Revision 'A,' with regard to the inspection of the air supply ducts and the terminating action paragraph.

A third commenter asks that the applicability be changed as well, for similar reasons as the other two commenters. The commenter also asks that the applicability be split into two sections, one for the bulkhead check valve and the other for the air supply ducts, which specify the aircraft effectivity for each inspection. The commenter proposes that the FAA take a similar approach to the applicability of the subject AD. The commenter states that if the applicability is not split as suggested, it may result in an initial inspection of air supply ducts on aircraft having serial numbers 7478 and higher, on which the newly designed air supply duct is installed.

We agree in part with the commenters' requests.

We agree that the applicability specified in this AD needs some clarification. Therefore, we have identified the airplanes subject to the actions specified in paragraphs (b)(1) and (b)(2) within those paragraphs, in order to clarify which airplanes are affected by which actions.

We do not agree to ''split'' the applicability into two sections, as this would be confusing to operators. Additionally, we do not agree to add the part numbers for affected bulkhead check valves to the applicability section because airplanes having both the bulkhead valves and the air supply ducts are affected by this AD. We have made no change to the AD in this regard.

Request To Reference Revised Service Information/Maintenance Manual

One commenter states that Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001 (which is referenced in the proposed AD as an appropriate source of service information for accomplishment of the inspection of the

bulkhead check valves), has been revised as of June 30, 2004 (Revision 'A'). The commenter adds that the inspection of the bulkhead check valves was removed in Revision 'A,' and was added to the Maintenance Review Board Report, Part 1, Maintenance Requirements Manual (MRM) under Task Number 21–51–21–07. The commenter also adds that the repetitive inspection interval is a 'C' check (4,000 flight hours), which is consistent with the referenced Canadian airworthiness directive. The commenter notes that Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has mandated the incorporation of this inspection into the MRM in lieu of mandating the repetitive inspections specified in the referenced service bulletin. The commenter recommends that the FAA follow TCCAs approach and mandate the repetitive inspections provided in the MRM. The commenter suggests that Revision 'A' of the service bulletin, as well as MRM Task Number 21–51–21–07, be referenced for accomplishment of the inspections of the bulkhead check valves specified in the proposed AD.

Another commenter asks that MRM Task Number 21–51–21–07 be added, as an option to using the referenced service bulletin, for accomplishment of the inspections of the bulkhead check valves specified in the proposed AD. The commenter states that it has not accomplished any inspections in accordance with Service Bulletin A601R–21–054, since a similar inspection already exists within its inspection program. Due to the commenter's fleet size, it would have to request an Alternative Method of Compliance (AMOC) to get credit for inspections accomplished in accordance with MRM Task Number 21–51–21–07, in order to meet the requirements specified in paragraph (b)(1) of the proposed AD. The commenter states that although the MRM inspection is not identical to the inspection specified in the proposed AD, the intent of the inspection is met, and is more thorough because the check valves are removed before the inspection is accomplished.

We do not agree with the commenters' requests. Although Part 1 of the MRM is accepted by the FAA, it is not approved, as is Part 2 of the Airworthiness Limitations section. We cannot control revisions of the MRM; therefore, a task could be changed or deleted, and the AD requirements would be modified without our approval. Operators may request an AMOC which would allow the use of a particular task card for accomplishing certain actions required by the AD. However, the AMOC would only be approved for the revision submitted, and any subsequent revisions would require a new AMOC request so we could establish that the AD requirements were not changed or deleted. We have made no change to the AD in this regard.

Request To Clarify Certain Sections in the Preamble

One commenter asks that the last sentence in the Discussion section of the proposed AD be rephrased, for clarification, to state ''If the bonding loses shear strength it could result in duct disconnection. Disconnection of an air supply duct in the unpressurized aft equipment bay, combined with a dormant failed bulkhead check valve, could result in rapid depressurization of the airplane.''

The same commenter asks that the wording in the third paragraph of the Explanation of Relevant Service Information section be changed, for clarification, to state ''It should be noted that terminating action for this repetitive inspection of the bulkhead check valve would only be available once a redesigned check valve is developed and certified for installation on the aircraft.''

We acknowledge and agree with the commenter's concerns; however, since those sections of the preamble are not restated in the final rule, no change to the AD is necessary to address the issues raised by the commenter.

Conclusion

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

Cost Impact

We estimate that 280 airplanes of U.S. registry will be affected by this AD.

It will take about 2 work hours per airplane to accomplish the inspection of the check valves, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection of the check valves on U.S. operators is estimated to be $36,400, or $130 per airplane, per inspection cycle.

It will take about 4 work hours per airplane to accomplish the inspection of the air supply ducts, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection of the air supply ducts on U.S. operators is estimated to be $260 per airplane, per inspection cycle.

It will take about 4 work hours per airplane to accomplish the replacement of the check valves, at an average labor rate of $65 per work hour. Required parts are free of charge. Based on these figures, the cost impact of the replacement of the check valves on U.S. operators is estimated to be $72,800, or $260 per airplane.

It will take about 3 work hours per airplane to accomplish the rework of the air supply ducts, at an average labor rate of $65 per work hour. Required parts are free of charge. Based on these figures, the cost impact of the rework of the air supply ducts on U.S. operators is estimated to be $54,600, or $195 per airplane.

It will take about 2 work hours per airplane to accomplish the replacement of the air supply ducts, at an average labor rate of $65 per work hour. Required parts are free of charge. Based on these figures, the cost impact of the replacement of the air supply ducts on U.S. operators is estimated to be $36,400, or $130 per airplane.

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

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–22–08 Bombardier, Inc. (Formerly Canadair): Amendment 39–13836. Docket 2003–NM–158–AD.

Applicability: All Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent disconnection of an air supply duct, which, if combined with failure of a bulkhead check valve, could result in rapid depressurization of the airplane, accomplish the following:

Service Information References

(a) Paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD pertain to the service information referenced in this AD.

(1) The term service bulletin, as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; as applicable.

(2) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

(3) Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001, recommends sending all damaged check valves to the manufacturer for analysis; however, this AD does not include that requirement.

(4) Accomplishment of the actions specified in Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001, before the effective date of this AD is considered acceptable for compliance with the applicable actions specified in this AD.

Repetitive Inspections/Related Corrective Actions

(b) Within 500 flight hours after the effective date of this AD: Do the detailed inspections and related corrective actions required by paragraphs (b)(1) and (b)(2) of this AD, per the applicable service bulletin.

(1) For airplanes having bulkhead check valves with part number (P/N) 92E20–3/–4, as identified in Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001: Inspect the left- and right-hand bulkhead check valves for damage (cracking, breakage). If any damage is found, before further flight, replace the damaged valve. Repeat the inspection at intervals not to exceed 4,000 flight hours.

(2) For airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7477 inclusive: Inspect the left- and right-hand air supply ducts of the rear bulkhead for damage (tearing, delamination, or cracking). If any damage is found, before further flight, either rework or replace the damaged air supply duct, which ends the inspections for that air supply duct only. If no damage is found, repeat the inspection thereafter at intervals not to exceed 500 flight hours until accomplishment of paragraph (c) of this AD.

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

Terminating Action for Repetitive Inspections of Air Supply Ducts

(c) Except as required by paragraph (b)(2) of this AD, for airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7477 inclusive: Within 5,000 flight hours after the effective date of this AD, either rework or replace the left- and right-hand air ducts, as applicable, per the applicable service bulletin. Accomplishment of this paragraph ends the repetitive inspections required by paragraph (b)(2) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–05, dated February 4, 2003.

Effective Date

(f) This amendment becomes effective on December 2, 2004.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24028 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–11666; Amendment No. 61–111]

RIN 2120–AH76

Picture Identification Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an amendment number in the final rule published in the **Federal Register** on October 28, 2002. That rule revised the pilot certificate regulations requiring a person to carry a photo identification acceptable to the FAA Administrator when exercising the privileges of a pilot certificate.

DATES: *Effective Date:* This correction is effective on October 28, 2004.

FOR FURTHER INFORMATION CONTACT: John D. Lynch, telephone (202) 267–3844.

Correction

In the final rule FR Doc. 02–27411 published on October 28, 2002 (67 FR 65858) make the following correction:

1. On page 65858, in column 1, in the heading section of the rule , beginning on line 4 of the heading, correct "Amendment No. 61–107" to read "Amendment No. 61–111."

Issued in Washington, DC on October 22, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–24141 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committee: Change of Name and Function; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the standing advisory committees' regulations to change the name and function of the Biological Response Modifiers Advisory Committee. This action is being taken to reflect changes made to the charter for this advisory committee.

DATES: This rule is effective October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Theresa Green, Advisory Committee Oversight Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: FDA is announcing that the name of the Biological Response Modifiers Advisory Committee, which was established on October 28, 1988, has been changed. The name ''Cellular, Tissue and Gene Therapies Advisory Committee'' more accurately describes the subject areas for which the committee is responsible. The committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies, and xenotransplantation products which are intended for transplantation, implantation, infusion, and transfer in the prevention and treatment of a broad spectrum of human diseases, and in the reconstruction, repair or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and makes appropriate recommendations to the Commissioner of Food and Drugs.

The Biological Response Modifiers Advisory Committee name was changed and its functions expanded in the charter renewal dated October 28, 2004. FDA is revising 21 CFR 14.100(b)(2) to reflect these changes. In this document, FDA is hereby formally changing the name and the function of the committee by revising 21 CFR 14.100(b)(2).

Publication of this final rule constitutes a final action on this change under the Administrative Procedure Act. Under 5 U.S.C. 553(b)(B) and (d) and 21 CFR 10.40(d) and (e), the agency finds good cause to dispense with notice and public procedure and to proceed to an immediately effective regulation. Such notice and procedures are unnecessary and are not in the public interest, because the final rule is merely codifying the new name and expanded function of the advisory committee to reflect the current committee charter.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107–109; Pub. L. 108–155.

■ 2. Section 14.100 is amended by revising the heading of paragraph (b)(2) and paragraph (b)(2)(ii) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(b) * * *

(2) Cellular, Tissue and Gene Therapies Advisory Committee.

* * * * *

(ii) Function: Reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products which are intended for transplantation, implantation, infusion, and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and makes appropriate recommendations to the Commissioner of Food and Drugs.

* * * * *

Dated: October 21, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–24065 Filed 10–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADAs) from Sweetlix LLC to Ridley U.S. Holdings, Inc.

DATES: This rule is effective October 28, 2004.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: Sweetlix LLC, 175 South Main St., suite 150, Salt Lake City, UT 84111, has informed FDA that it has transferred ownership of, and all rights and interest in, the following three approved NADAs to Ridley U.S. Holdings, Inc., 424 North Riverfront Dr., P.O. Box 8500, Mankato, MN 56002–8500:

Application Number	21 CFR Section	Trade Name
NADA 033–733	520.1840	Sweetlix Bloat Guard Block

Application Number	21 CFR Section	Trade Name
NADA 109–471	520.1448a	Cattle Block M
NADA 136–214	520.1846	Enproal Bloat Blox

Accordingly, the agency is amending the regulations in 21 CFR 520.1448a, 520.1840, and 520.1846 to reflect the transfer of ownership.

Following these changes of sponsorship, Sweetlix LLC is no longer the sponsor of an approved application. In addition, Ridley U.S. Holdings, Inc., is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, § 510.600(c) is being amended to remove the entries for Sweetlix LLC and to add entries for Ridley U.S. Holdings, Inc.

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

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

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 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR parts 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Sweetlix LLC'' and by alphabetically adding an entry for ''Ridley U.S. Holdings, Inc.'' and in the table in paragraph (c)(2) by removing the entry for ''036904'' and by adding an entry for ''067949'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Ridley U.S. Holdings, Inc., 424 North Riverfront Dr., P.O. Box 8500, Mankato, MN 56002–8500.	067949
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
067949	Ridley U.S. Holdings, Inc., 424 N. Riverfront Dr., P.O. Box 8500, Mankato, MN 56002–8500
* *	* * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.1448a [Amended]

■ 4. Section 520.1448a is amended in paragraph (a)(2) by removing ''036904'' and by adding in its place ''No. 067949.''

§ 520.1840 [Amended]

■ 5. Section 520.1840 is amended in paragraph (b)(3) by removing ''036904'' and by adding in its place ''067949.''

§ 520.1846 [Amended]

■ 6. Section 520.1846 is amended in paragraph (b) by removing ''050112'' and by adding in its place ''067949.''

Dated: October 20, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–24112 Filed 10–27–04; 8:45 am]

BILLING CODE 4160–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–115; FCC 04–206]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission addresses the petitions for reconsideration of the *Subscriber List Information Order*, which adopted rules to implement section 222(e) of the Communications Act of 1934, as amended (Communications Act or Act). The Commission denies requests for modification of certain aspects of the complaint procedures, notification requirements, and unbundling requirements established in the *Subscriber List Information Order*. The Commission eliminates the requirement for carriers to provide requesting directory publishers with notice of changes in subscriber list information in circumstances where customers choose to cease having their numbers listed, and modifies the contract disclosure requirement to allow carriers to withhold from disclosure those portions of their contracts that are unrelated to the provision of subscriber list information and to subject such disclosures to confidentiality agreements.

DATES: The amendments to § 64.2341 are effective November 29, 2004.

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

FOR FURTHER INFORMATION CONTACT: William Kehoe, Senior Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7122, or at *William.Kehoe@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration (Reconsideration Order*) in CC Docket No. 96–114, FCC 04–206, adopted August 25, 2004, and released September 13, 2004. The complete text of this Reconsideration Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893,

facsimile 202–863–2898, or via e-mail at *bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Memorandum Opinion and Order on Reconsideration

1. *Background.* Section 222(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), requires carriers that provide telephone exchange service to provide requesting directory publishers with subscriber list information, that is listed subscribers' names, addresses, telephone numbers, and headings under which businesses are listed in the yellow pages, ''on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions.'' In 1999, in the *Subscriber List Information Order*, the Commission adopted comprehensive rules implementing section 222(e), consistent with the congressional intent to prevent carriers from leveraging their control over subscriber list information to impede competition in directory publishing (64 FR 53944, Oct. 5, 1999). These rules established procedures for carrier provision of subscriber list information to directory publishers, established presumptively reasonable rates for carrier provision of subscriber list information to directory publishers, and provided processes for addressing subscriber list information complaints. ALLTEL Corporate Services, Inc. (ALLTEL), the Association of Directory Publishers (ADP), Bell Atlantic (now Verizon), National Telephone Cooperative Association (NTCA), and US WEST Communications, Inc., (now Qwest Communications International Inc.) filed petitions for reconsideration that challenged certain aspects of the *Subscriber List Information Order.* Subsequently, NTCA withdrew its petition for reconsideration.

2. *Complaint Procedures.* In this order, the Commission denies a request to modify current complaint procedures to allow a directory publisher to pay the presumptively reasonable rates during the pendency of a complaint. Additionally, the Commission denies a request that any subscriber list information rate complaint will be given accelerated docket treatment or otherwise resolved within 60 days of filing.

3. *Treatment of Unlisted Numbers.* The Commission grants a request to eliminate a requirement for carriers to provide requesting directory publishers with notice of changes in subscriber list information when customers choose to have unlisted numbers.

4. *Availability of Written Contracts.* The requirement in the *Subscriber List Information Order* regarding contract disclosure is confirmed by the Commission as a useful tool to prevent discrimination. However, the Commission specifies that carriers may limit such disclosures to only those portions of contracts that are related to the carrier's provision of subscriber list information. The Commission also determines that carriers may subject such disclosures to confidentiality agreements.

5. *Timeframe for Provision of Subscriber List Information.* In the *Subscriber List Information Order*, the Commission adopted rules to help ensure that carriers provide subscriber list information on a ''timely'' basis as required by section 222(e). One of these rules gave carriers 30 days to inform directory publishers that they cannot comply with requests for subscriber list information. In the Reconsideration Order, the Commission declines to lower this timeframe to seven days.

6. *Safeguards.* In the *Subscriber List Information Order*, the Commission allowed carriers to require entities requesting subscriber list information pursuant to section 222(e) to certify that they will use that information only for directory publishing purposes. The Commission determined that once the directory publisher provides this certification, the carrier must comply with the directory publisher's request for subscriber list information absent a Commission order to the contrary. In the Reconsideration Order, the Commission affirms this requirement, stating that this ''innocent until proven guilty'' approach ensures that a directory publisher that meets the certification requirement will have the subscriber list information it needs to publish its directories pending resolution of any dispute regarding subscriber list information usage. The Commission also states that a ''guilty until proven innocent'' approach, even if limited to entities that are not established directory publishers, would enable carriers to delay entry by potential directory publishing competitors by forcing them to obtain Commission determinations in their favor prior to their receiving subscriber list information.

7. *Role of Carrier Publishing Affiliates.* In the *Subscriber List Information Order*, the Commission determined that a carrier's decision to have an affiliate or third party assign primary advertising classifications as required under a state obligation does not absolve the carrier of its obligation to provide those classifications to requesting directory publishers in accordance with section 222(e). Consistent with the principle behind this determination, the Commission determines that in the Reconsideration Order that a carrier should not be allowed to use an affiliate to evade its subscriber list information responsibilities under section 222(e) and the Commission's implementing rules.

8. *Section 222(e) Unbundling.* In implementing section 222(e)'s unbundling requirement, the Commission concluded in the *Subscriber List Information Order* that section 222(e) precludes a carrier from bundling listings that the carrier is able to sell separately. The Commission required carriers to unbundle subscriber list information, including updates, on any basis requested by a directory publisher that the carrier's internal systems can accommodate. The Commission stated that, if this process results in the provision of listings in addition to those the directory publisher requested, the carrier may impose charges for, and the directory publisher may publish, only the requested listings. In the Reconsideration Order, the Commission declines to adopt suggested changes to these requirements. The Commission concludes that the unbundling requirements adopted in the *Subscriber List Information Order* properly balance carriers' and directory publishers' competing interests.

9. *Unpublished and Unlisted Information.* In the Reconsideration Order, the Commission denies a request that it rules that sections 201 and 202 of the Act mandate that carriers must provide information regarding subscribers with unpublished and unlisted numbers to competing publishers if the carriers provide that information to their own publishing affiliates. The Commission determines that this request is beyond the scope of this proceeding, which it had initiated to consider adopting regulations to implement section 222 of the Act and did not indicate that the Commission might act pursuant to sections 201 or 202.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in CC Docket No. 96–115 (*Notice*). The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. In addition, a Final Regulatory Flexibility Analysis was incorporated in the *Third*

Report and Order in CC Docket No. 96–115 (*Subscriber List Information Order*). This present Supplemental Final Regulatory Flexibility Analysis (SFRFA) on the *Memorandum Opinion and Order on Reconsideration (Reconsideration Order)* conforms to the RFA.

Need for, and Objectives of, Adopted Rules

11. The need for and objectives of the rules adopted in this *Reconsideration Order* are the same as those discussed in the FRFA on the *Subscriber List Information Order.* In general, these rules implement section 222(e) of the Communications Act, in order to further Congress's goal of preventing unfair local exchange carrier (LEC) practices in relation to subscriber list information and of encouraging the development of competition in directory publishing. The Commission promulgated rules pursuant to section 222(e) of the Communications Act in the *Subscriber List Information Order.* We grant in part, and deny in part the requests for reconsideration or clarification of the *Subscriber List Information Order.* In particular, we deny a request that the Commission modify the complaint procedures adopted in the *Subscriber List Information Order* by allowing a publisher to pay the presumptively reasonable rates during the pendency of a complaint and by guaranteeing that any subscriber list information rate complaint will be given accelerated docket treatment or otherwise resolved within 60 days of filing. We grant a request that the Commission eliminate a requirement that carriers provide requesting directory publishers with notice of changes in subscriber list information in circumstances where customers choose to cease having their numbers listed. We confirm as a useful tool to prevent discrimination the *Subscriber List Information Order's* requirement regarding contract disclosure, but allow carriers to limit such disclosures to only those portions of contracts that are related to subscriber list information and subject such disclosures to confidentiality agreements. Finally, the Commission affirms other aspects of the *Subscriber List Information Order* that were subject to petitions for reconsideration.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

12. We received no comments directly in response to the FRFA in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

14. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission published in its *Trends in Telephone Service August 2003* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of ''Wired Telecommunications Carriers,'' ''Paging,'' and ''Cellular and Other Wireless Telecommunications.'' Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

15. We have included small incumbent local exchange carriers (incumbent LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business, having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

16. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were a total of 2,225 firms in this category that operated for the entire year. Of this total, 2,210 firms employed 999 or fewer employees, and an additional 24 firms employed 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

17. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for ''Wired Telecommunications Carriers.'' Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

18. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services or to competitive access providers or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which TRS data are collected. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service, competitive access providers, and ''Other Local

Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

19. *Local Resellers.* The SBA has developed a specific size standard for small businesses within the category of ''Telecommunications Resellers.'' Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 133 companies reported that they were engaged in the provision of local resale services. Of these 133 companies, an estimated 127 have 1,500 or fewer employees and 6 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

20. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of ''Telecommunications Resellers.'' Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 625 companies reported that they were engaged in the provision of toll resale services. Of these 625 companies, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

21. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for ''Wired Telecommunications Carriers.'' Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 261 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 carriers, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

22. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for ''Wired Telecommunications Carriers.'' Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

23. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of ''Telecommunications Resellers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

24. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for ''Wired Telecommunications Carriers.'' Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 92 carriers reported that they were engaged in the provision of ''Other Toll Services.'' Of these 92 carriers, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that a majority of ''Other Toll Carriers'' may be affected by the rules.

25. *Directory Publishers.* Many directory publishers are members of either of two trade associations, Association of Directory Publishers (ADP) and Yellow Pages Integrated Media Association (YPIMA). ADP states that its membership includes more than 135 directory publishers. Collectively, these companies publish over 2,200 different directories annually. While we have no current information on the number of YPIMA's members, YPIMA states that its members deliver yellow pages directories to virtually all telephone households within the United States. We have also no data on how many ADP and YPIMA members have gross annual revenues of $5 million or less. We assume, for purposes of this SFRFA, that all of these publishers are small entities that may be affected by this *Reconsideration Order.* Collectively, ADP and YPIMA members publish the vast majority of the directories published in the United States. There, however, likely are additional directory publishers that are small entities.

Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. In this section of the Supplemental FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this *Reconsideration Order.* We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected.

27. In the *Subscriber List Information Order,* the Commission adopted presumptively reasonable rates of $0.04 per listing for base file subscriber list information and $0.06 per listing for updates. In the *Reconsideration Order,* we deny a request that the Commission modify the complaint procedures adopted in the *Subscriber List Information Order* by allowing a publisher to pay those presumptively reasonable rates during the pendency of a complaint and by guaranteeing that any subscriber list information rate complaint will be given accelerated docket treatment or otherwise resolved within 60 days of filing. We grant a request that the Commission eliminate a requirement that carriers provide requesting directory publishers with notice of changes in subscriber list information in circumstances where customers choose to cease having their numbers listed. We confirm as a useful tool to prevent discrimination the *Subscriber List Information Order's* requirement regarding contract disclosure, but allow carriers to limit such disclosures to only those portions of contracts that are related to subscriber list information and subject such disclosures to confidentiality agreements. We decline ADP's request to change the timeframe in which carriers must inform directory publishers that they cannot comply with a request for subscriber list information to seven days. We determine that the safeguards adopted in the *Subscriber List Information Order* are sufficient and reject a request to allow a carrier to refrain from providing subscriber list information to directory publishers that the carrier believes will misuse it. We affirm that carriers may not use their publishing affiliates to avoid fulfilling their duties under section 222(e). We

reject Bell Atlantic's requests that we determine that if a carrier is unable to unbundle subscriber list information in the manner that the publisher requests, the publisher must pay for all the listings received, not just the listings that the publisher uses. Finally, we reject a request that we take action under sections 201 and 202 of the Act, because such action would be beyond the scope of the original *Notice* in this docket. Additionally, the collection of information contained herein is contingent upon approval by the Office of Management and Budget.

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

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

29. In choosing among the various alternatives in the *Reconsideration Order,* we have sought to minimize the adverse economic impact on carriers and directory publishers, including those that are small entities. As was the case in the *Subscriber List Information Order,* moreover, we recognize that Congress intended section 222(e) to prevent carriers from deriving economic benefits from refusing to provide subscriber list information on a timely and unbundled basis, charging discriminatory or unreasonable rates for that information, or imposing discriminatory or unreasonable terms or conditions in connection with the provision of that information. In reconsidering our rules implementing that section, we have sought to further this congressional intent in a manner that minimizes regulatory burdens, including the burdens on small entities. The effort has resulted in our eliminating a requirement that carriers provide requesting directory publishers with notice of changes in subscriber list information in circumstances where customers choose to cease having their numbers listed. We also amend our contract disclosure rules to allow carriers to withhold from disclosure certain portions of subscriber list information contracts and to subject disclosure of such contracts to confidentiality agreements. These changes should reduce burdens on carriers, including those that are small businesses, without adversely affecting directory publishers.

30. In other instances, however, we reject as unsupported by the record proposed alternatives to the rules adopted in the *Subscriber List Information Order.* For instance, we reject as beyond the scope of this proceeding a request that we take action, pursuant to sections 201 and 202 of the Communications Act, to prohibit carriers from favoring their own directory publishing operations over their competitors' operations in connection with information regarding subscribers with unpublished or unlisted numbers. We believe that these actions properly balance the interests of carriers and directory publishers, including the members of each group that are small businesses.

Report to Congress

31. The Commission will send a copy of the *Reconsideration Order,* including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Reconsideration Order,* including the SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Reconsideration Order* and SFRFA (or summaries thereof) also will be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

32. Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f), 303(r), and 403, that this *Memorandum Opinion and Order on Reconsideration is adopted.*

33. *It is further ordered,* pursuant to sections 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f), 303(r), and 403, that this *Memorandum Opinion and Order on Reconsideration shall become effective* thirty days after publication of the text or a summary thereof in the **Federal Register**, except for paragraphs 7 through 10 of this summary, which contain collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

34. *It is further ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f), 303(r), and 403 that the petition for reconsideration of the *Subscriber List Information Order* filed on November 4, 1999, by the Association of Directory Publishers *is granted* to the extent indicated herein and otherwise *is denied.*

35. *It is further ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f), 303(r), and 403 that the petition for reconsideration and clarification of the *Subscriber List Information Order* filed on November 4, 1999, by ALLTEL Corporate Services, Inc., *is granted* to the extent indicated herein and otherwise *is denied.*

36. *It is further ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f), 303(r), and 403 that the petition for reconsideration of the *Subscriber List Information Order* filed on November 4, 1999, by the Bell Atlantic *is granted* to the extent indicated herein and otherwise *is denied.*

37. *It is further ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f), 303(r), and 403 that the petition for reconsideration of the *Subscriber List Information Order* filed on November 4, 1999, by U S WEST Communications, Inc., *is granted* to the extent indicated herein and otherwise *is denied.*

38. *It is further ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f), 303(r), and 403 that the petition for reconsideration of the *Subscriber List Information Order* filed on November 4, 1999, by National Telephone Cooperative Association *has been withdrawn.*

39. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference

Information Center, *shall send* a copy of this *Memorandum Opinion and Order on Reconsideration,* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

Subscriber List Information, Record Keeping, and Directory Publishers.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

■ 2. Section 64.2341 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 64.2341 Record keeping.

* * * * *

(c) Except to the extent specified in paragraph (d), a carrier shall make the contracts and records described in paragraphs (a) and (b) available, upon request, to the Commission and to any directory publisher that requests those contracts and records for the purpose of publishing a directory.

(d) A carrier need not disclose to a directory publisher pursuant to paragraph (c) portions of requested contracts that are wholly unrelated to the rates, terms, or conditions under which the carrier provides subscriber list information to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

(e) A carrier may subject its disclosure of subscriber list information contracts or records to a directory publisher pursuant to paragraph (c) to a confidentiality agreement that limits access to and use of the information to the purpose of determining the rates, terms, and conditions under which the carrier provides subscriber list information to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

[FR Doc. 04–23094 Filed 10–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278, FCC 04–223]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: In this document, the Commission extends through June 30, 2005, the effective date of the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the rule requiring that the sender of a facsimile advertisement first obtain the recipient's express permission in writing.

DATES: The effective date of the rule amending 47 CFR part 64, § 64.1200(a)(3)(i) published at 68 FR 44144, July 25, 2003, is delayed until July 1, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon at 202–418–2512, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in CG Docket No. 02–278, FCC 04–223, adopted on September 15, 2004 and released on October 1, 2004. The full text of this document is available at the Commission's Web site *http://www.fcc.gov* on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPA), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc., at its Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). The *Order* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb*.

Synopsis

On July 3, 2003, the Commission revised the unsolicited facsimile advertising requirements under the Telephone Consumer Protection Act of 1991 (TCPA). On August 18, 2003, the Commission issued an *Order on Reconsideration* (68 FR 50978, August 25, 2003) that established an effective date of January 1, 2005. We now extend, through June 30, 2005, the effective date of the determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, as well as the amended unsolicited facsimile provisions at 47 CFR 64.1200(a)(3)(i). Section 64.1200(a)(3)(i), as amended, requires the sender of a facsimile advertisement to first obtain from the recipient a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender. In light of recent action by the United States House of Representatives to amend the TCPA and similar proposed legislation in the United States Senate, we believe the public interest would best be served by delaying the effective date of the written consent requirement for six months to allow Congress to act. Should Congress not act in this regard, a further extension will provide the Commission requisite time to address the petitions for reconsideration filed on these issues. For these same reasons, through June 30, 2005, the 18-month limitation on the duration of the established business relationship based on purchases and transactions and the three-month limitation on applications and inquiries will not apply to the transmission of facsimile advertisements.

We emphasize that our existing TCPA rules prohibiting the transmission of unsolicited advertisements to a telephone facsimile machine will remain in effect during the pendency of this extension. Under these rules, those transmitting facsimile advertisements must have an established business relationship or prior express permission from the facsimile recipient to comply with our rules.

Ordering Clauses

Pursuant to sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154,

227, and 303(r), the *Order* in CG Docket No. 02–278 *is adopted* and that the *Report and Order*, FCC 03–153, *is modified* as set forth herein.

The Fax Ban Coalition's Petition for Extension of Delay *is granted* to the extent discussed herein.

The effective date for the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given their express permission to receive unsolicited facsimile advertisements and the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing, as codified at 47 CFR 64.1200(a)(3)(i), *is* July 1, 2005, and that the *Order* is effective October 28, 2004.

The Commission will not send a copy of the *Order* pursuant to Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24125 Filed 10–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3236, MM Docket No. 01–334, RM–10343]

Digital Television Broadcast Service; Green Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of CBS Broadcasting Inc., substitutes DTV channel 39c for DTV channel 56 at Green Bay, Wisconsin. *See* 66 FR 66867, December 27, 2001. DTV channel 39c can be allotted to Green Bay, Wisconsin, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 44–20–01 N. and 87–58–56 W. with a power of 1000, HAAT of 364 meters and with a DTV service population of 997 thousand. Since the community of Green Bay is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective December 6, 2004.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–334, adopted October 12, 2004, and released October 20, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com*.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this [Report & Order etc.] in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Wisconsin, is amended by removing DTV channel 56 and adding DTV channel 39c at Green Bay.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–24123 Filed 10–27–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 221 and 235

[Docket No. FRA–2004–17529; Notice No. 2]

RIN 2130–AB61

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

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

ACTION: Final rule; correcting amendments.

SUMMARY: On May 28, 2004, FRA published a final rule, which increased the minimum and aggravated maximum civil monetary penalties it applies when assessing a civil penalty for a violation of railroad safety statutes and regulations under its authority. In preparing that final rule for publication, six minor typographical errors were made. These amendments correct the typographical errors published in the final rule.

DATES: The corrections to the final rule are effective on October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa L. Porter, Trial Attorney, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20003, (202) 493–6034, *Melissa.Porter@fra.dot.gov.*

SUPPLEMENTARY INFORMATION: The errors included in the final rule published on May 28, 2004 (69 FR 30591) consisted of twice listing incorrect appendices to be amended (appendix A to part 221 instead of appendix C; and appendix A to part 241 instead of appendix B), inserting the incorrect monetary amount in one amendment (to part 235), and listing the incorrect section to be amended in (§ 231.11 instead of § 233.11) another amendment. All of the typographical errors were obvious from their context. FRA is correcting these minor errors so that the final rule clearly conforms to FRA's intent.

List of Subjects in 49 CFR Parts 221 and 235

Railroad safety, Penalties.

The Final Rule

■ In accordance with the foregoing, 49 CFR parts 221, 233, 235, and 241, chapter II, subtitle B of title 49, Code of Federal Regulations are corrected by making the following correcting amendments:

PART 221—[AMENDED]

■ 1. The authority citation for part 221 continues to read as follows:

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

Appendix C to Part 221—[Amended]

■ 2. Footnote 1 to appendix C of part 221 is amended by removing the numerical amount ''$20,000'' and adding in its place the numerical amount ''$27,000''.

PART 235—[AMENDED]

■ 3. The authority citation for part 235 continues to read as follows:

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

Appendix A to Part 235—[Amended]

■ 4. Footnote 1 to appendix A of part 235 is amended by removing the numerical amount ''$20,000'' and adding in its place the numerical amount ''$27,000''.

Issued in Washington, DC, on October 22, 2004.

Betty Monro,

Acting Administrator, Federal Railroad Administration.

[FR Doc. 04–24147 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 101904A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Recreational Red Snapper Component

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

ACTION: Closure of recreational fishery for red snapper.

SUMMARY: NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the annual recreational quota of 4.47 million lb (2.03 million kg) will be reached on October 31, 2004. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective 12:01 a.m., local time, November 1, 2004, until 12:01 a.m., local time, on April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727-570-5784, fax 727-570-5583, e-mail *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council 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. Those regulations set the recreational quota for red snapper in the Gulf of Mexico at 4.47 million lb (2.03 million kg) for the current fishing year, January 1 through December 31, 2004.

Under 50 CFR 622.43(a), NMFS is required to close the recreational fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register.** Based on current statistics, NMFS has determined that the recreational quota of 4.47 million lb (2.03 million kg) for red snapper will be reached by October 31, 2004. Accordingly, the recreational fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until 12:01 a.m., local time, on April 21, 2005.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b)(1)(iii) and (b)(2) respectively, are zero. Also, in the Gulf of Mexico, on board a vessel for which a commercial permit for Gulf reef fish has been issued, the bag and possession limits for red snapper are zero, without regard to where such red snapper were harvested.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity to comment is contrary to the public interest because it requires time, thus delaying closure of the fishery and increasing the chance of exceeding the quota. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the recreational quota of Gulf red snapper, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contrary to the Magnuson-Steven Act, the FMP, and the public interest. Therefore, NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is waived.

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

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

Dated: October 21, 2004.

Dean Swanson,

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

[FR Doc. 04–24105 Filed 10–25–04; 4:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040804226–4278–02; I.D. 071904C]

RIN 0648–AR50

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 5

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 5 (Framework 5) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow for specification of annual Total Allowable Landings (TAL) for multiple years. The intent is to provide flexibility and efficiency to the management of the species. In addition, this final rule includes several administrative modifications to the existing regulations for clarification purposes.

DATES: This rule is effective November 29, 2004.

ADDRESSES: Copies of Framework 5, the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA),

and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The RIR/IRFA is also accessible via the Internet at *http:/www.nero.nmfs.gov*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The proposed rule to implement Framework 5 was published on August 30, 2004 (69 FR 52847). A complete discussion of the development of Framework 5 appeared in the preamble of the proposed rule and is not repeated here. The current regulations outline an annual process for specifying the TALs for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries.

Framework 5 allows for specification of TALs for the summer flounder, scup, and/or black sea bass fisheries in any given year for the following 1, 2, or 3 years. NMFS would not be obligated to specify multi-year TALs, but would be able to do so, depending on the information available and the status of the fisheries.

The environmental and regulatory review procedures currently required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), National Environmental Policy Act, and other applicable law will be conducted and documented during the year in which the multi-year TAL specifications are set. The analyses will consider impacts throughout the time span for which specifications are set (i.e., 1 to 3 years). TALs would not have to be constant from year to year within the multi-year specifications, but would instead be based upon expectations of future stock conditions as indicated by the best scientific information available at the time the multi-year specifications are set.

Annual review of updated information on the fisheries by the Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and the Council would not be required during the period of multi-year specifications. As such, adjustments to the TALs for years 2 and/or 3 would not occur once the multi-year specifications are set. Given the absence of an annual review TAL adjustment process, environmental impact evaluation in the specification setting year would have to consider thoroughly the uncertainty associated with projected estimates of stock size in the 2- to 3–year time horizon. Accordingly, Council recommendations for multi-year TALs would be expected to be appropriately conservative in order to reflect this uncertainty. Although the Council's process for setting multi-year TALs would occur prior to the first year that the specifications would be in place, with no requirement to review the specifications prior to the second and/or third years, NMFS will continue to publish a proposed and final rule each year, notifying the public of the commercial quotas and recreational harvest limits. While the Council may set the TALs for multiple years, the actual quotas available to the fisheries in any one year would be a function of the specified TALs, as reduced to account for any quota overages in previous years and to account for research set-aside (RSA) allocations set by the Council for the upcoming fishing year. Quota overages cannot be determined beforehand, and RSA allocations are set based on research proposals submitted, reviewed, and selected on an annual basis. NMFS will also continue to issue inseason actions, as necessary, to adjust commercial quotas based on updated landings information, to close a fishery or season when a quota is projected to be reached, and/or to roll over available scup quota from the Winter I period to the Winter II period, as already established in the FMP.

Need for Clarification

This final rule also makes several administrative changes to other aspects of the regulations governing the summer flounder, scup, and black sea bass fisheries, which were set out in the proposed rule (69 FR 52847, August 30, 2004), to: (1) Reduce the application burden and enrollment period for a summer flounder small mesh exemption area Letter of Authorization (LOA); (2) include the commercial summer flounder fishery in the list of fisheries for which an operator permit is required; and (3) clarify the scup and black sea bass regulations such that RSA quota may be established for between 0 and 3 percent of TAL. A further explanation of these regulatory changes appears in the Classification section of this preamble.

Comments and Responses

Two comment letters were received, via e-mail, regarding the proposed rule.

Comment 1: One commenter did not specifically address the proposed action, but rather indicated general support for marine protected areas, reduction of commercial quotas in general, and better enforcement of fisheries regulations.

Response: Framework 5 is intended to address the process by which TALs are specified. In addition, this rule makes minor administrative changes to the regulations for clarification purposes. While NMFS acknowledges the importance of the issues raised by the commenter, this rule is not the proper mechanism to address these general issues.

Comment 2: The other commenter indicated a preference for the non-preferred alternative that would allow the setting of specifications for up to 3 years, but would require an annual review by the Council's Monitoring Committees. The commenter took issue with the characterization that the proposed action would benefit user groups by providing greater stability and dependability. This commenter also expressed concern over the potential for more conservative TALs set under this program to result in more restrictive management measures than are currently in place for the recreational fishing sector, with the risk that these

more restrictive measures would cause economic harm to this sector.

Response: The absence of an annual review process by the Council for TALs in years 2 and 3 may increase the risk that harvest at specified TALs in a given year would exceed appropriate fishing mortality rates for the management units. This may occur if population biomass was to deviate substantially from projection estimates generated during the specification setting year. Conversely, population projections may underestimate stock size, which would lead to harvest below allowable levels. Although the provision for an annual review reduces the risk of negative impacts to the fishery resources, it would also reduce administrative efficiency by increasing the chance that a previous specified TAL would be modified even for de minimus changes in TAL. The risks associated with these potential outcomes would be carefully considered by the Council when determining the appropriate TALs for years two and three in the specification setting year. If new information indicates that a modification to the multiple-year TAL is necessary, NMFS could initiate rulemaking required to make such modifications.

While NMFS acknowledges that the implementation of management measures such as recreational possession limits and fishing seasons will continue to be subject to annual review of the best available information on landings for the previous year, NMFS maintains that the establishment of multi-year TALs should provide greater regulatory consistency and predictability to the commercial and recreational fishing sectors, because advance notice of a future year's TAL would provide some indication of whether regulations such as those regarding possession limit and season would be maintained, tightened, or relaxed.

Implementation of Framework 5 provides NMFS the option, not a requirement, to implement TALs for up to 3 years. Due to its administrative nature, no direct impacts on the economy are expected from the proposed action. All of the environmental impact review procedures required under the Magnuson-Stevens Act and other applicable laws that occur under the current annual specification system will be conducted as part of the Council's TAL specifications submission to NMFS. These review procedures collectively ensure that significant economic effects be considered in the implementation of harvest policy, e.g., if setting a TAL for years 2 and 3 is appropriate, given the best information available at the time the specifications are set.

Classification

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts summarized in the IRFA for the proposed rule (69 FR 52847, August 30, 2004), the comments on, and responses to, the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Two comments were received on the measures contained in the proposed rule. One comment was received on the potential economic impact of the rule. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, and the responses thereto refer to the ''Comments and Responses'' section of this preamble.

Description and Estimate of Number of Small Entities to Which this Rule Will Apply

The action to implement Framework 5 deals only with the administrative periodicity of annual TAL setting and has no direct effect on entities participating in the fishery because it does not require the implementation of three year TALS. Reduction of the application burden and enrollment period for a summer flounder small mesh exemption area LOA will affect approximately 91 vessel owner/operators on an annual basis (based on the number of applicants in previous years). The requirement for an operator permit in the summer flounder fishery will affect only one summer flounder moratorium permit holder.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule. The reporting and recordkeeping requirements associated with the issuance of operator permits has been previously approved by the Office of Management and Budget under OMB approval number 0648–0202. Inclusion of the commercial summer flounder fishery in the list of fisheries for which an operator permit is required corrects an inadvertent omission and does not substantially alter the current annual recordkeeping and reporting burden, as it will affect only one summer flounder moratorium permit holder, who would be required to complete and submit a one-page form (with an estimated public burden of 1 hour). All of the other summer flounder moratorium permit holders are in compliance as a result of holding other Federal permits.

There are no relevant Federal rules that duplicate, overlap, or conflict with this rule. Framework 5 deals only with the administrative periodicity of annual TAL setting, and therefore will have minimal direct effect on entities participating in these fisheries. The other actions in this rule are also solely administrative in nature and are intended to clarify existing regulations. The action regarding the summer flounder small mesh exemption LOA will clarify the application process and reduce the burden on applicants. The action regarding setting the research quota for the scup and black sea bass fisheries within a range of 0 to 3 percent of TALs specified for these species was the maximum allowed to achieve the specified exploitation rate was discussed in the preamble to a final rule regarding these fisheries in 2001 (66 FR 42156, August 10, 2001), but the associated change to the regulatory text inadvertantly was not made at that time.

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

There are no economic impacts associated with this action, which is administrative in nature. As such, no steps are needed to minimize impacts. NMFS chose the preferred alternative over the other alternatives because it allows for greater efficiency in the setting of TALs for the summer flounder, scup, and black sea bass fisheries. The alternative containing a provision for annual review was rejected because it would increase the chance that a previous specified TAL would be modified even for de minimus changes in TAL. The no action alternative was rejected because it continued unnecessarily the level of Council and NMFS staff effort required to develop, review and implement annual specifications for fisheries that could be managed with multi-year

TALs. The amount of staff effort saved through the implementation of multi-year TALS allows for the implementation of annual specification for other fisheries on a more timely basis, thereby allowing fishermen to begin a fishing year fully informed as to the amount of a species they can harvest. Further, the no action alternative failed to provide fishermen the level of long range planning and flexibility possible with a multi-year TAL.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (i.e., permit holder letter) will be sent to all summer flounder, scup, and black sea bass permit holders to inform them of the implementation of Framework 5 and the additional administrative modifications to the existing regulations. As indicated above, the only measure that requires compliance by permit holders is the requirement for an operator permit in the summer flounder fishery. NMFS will contact directly the one summer flounder moratorium permit holder affected by this rule and request the permit holder to complete and submit a one-page form. Copies of the final rule and permit holder letter are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov*.

List of Subjects in 50 CFR Part 648

Fisheries, Reporting and recordkeeping requirements.

Dated: October 22, 2004.

Rebecca Lent,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.4, paragraph (a)(3)(iii) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(3) * * *

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must request a letter of authorization (LOA) from the Regional Administrator. Vessels must be enrolled in the exemption program for a minimum of 7 days. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the **Federal Register**. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

* * * * *

■ 3. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

■ 4. In § 648.14, paragraph (a)(89) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(89) Fish for, catch, and retain, or land scup in or from the EEZ north of 35°l5.3′ N. lat. in excess of the landing limit established pursuant to § 648.120(b)(3) and (b)(4).

* * * * *

■ 5. In § 648.100, paragraph (a) and the headings of paragraphs (a), (b), and (c) are revised, and a new paragraph (b)(11) is added to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Review.* The Summer Flounder Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50–percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (F_{max}): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures on an annual basis.* * * *

* * * * *

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(c) *Fishing measures.* * * *

* * * * *

■ 6. In § 648.104, paragraph (b)(1) is revised to read as follows:

§ 648.104 Gear restrictions.

* * * * *

(b) * * *

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(I) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing

under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.100(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be in enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

* * * * *

■ 7. In § 648.105, the first sentence of paragraph (d) is revised to read as follows:

§ 648.105 Possession restrictions.

* * * * *

(d) Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(e), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.104(b). * * *

■ 8. In § 648.120, paragraphs (b)(1) through (b)(10) are redesignated as paragraphs (b)(2) through (b)(11), paragraph (a) and the heading of paragraph (c) are revised, and new paragraphs (b)(1) and (b)(12) are added to read as follows:

§ 648.120 Catch quotas and other restrictions.

(a) *Review.* The Scup Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational, and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit (F_{max}).

(b) * * *

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

* * * * *

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

(c) *Fishing measures.* * * *

* * * * *

■ 9. In § 648.140, paragraphs (b)(1) through (b)(9) are redesignated as paragraphs (b)(2) through (b)(10), paragraph (a) and the heading of paragraph (c) are revised, and new paragraphs (b)(1) and (b)(11) are added to read as follows:

§ 648.140 Catch quotas and other restrictions.

(a) *Review.* The Black Sea Bass Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on F_{max}) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) * * *

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

* * * * *

* * * * *

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(c) *Fishing measures.* * * *

* * * * *

[FR Doc. 04–24107 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 208
Thursday, October 28, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–132–1]

RIN 0579–AB83

Requirements for Requests To Amend Import Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish regulations governing the submission of requests for changes in our regulations that restrict the importation of plants, plant parts, and plant products. We are proposing this action because, despite existing non-regulatory guidance on the submission of requests, few applicants provide the basic information we require to properly consider their requests. We expect that adoption of this proposal would help ensure that we are provided with the information we need to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with the proposed change to the regulations. This information is needed for us to effectively consider the request, and submission of the information at the time the request is made allows us to proceed with our consideration of the request in a timely manner.

DATES: We will consider all comments that we receive on or before December 27, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 02–132–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–132–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–132–1'' on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: For information related to risk analyses, contact Mr. Robert L. Griffin, Director, Plant Epidemiology and Risk Analysis Laboratory, Center for Plant Health, Science, and Technology, PPQ, APHIS, 1730 Varsity Drive Suite 300, Raleigh, NC 27606; (919) 855–7400.

For information related to environmental analyses, contact Mr. Carl Bausch, Chief, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237; (301) 734–8963.

For information related to economic analyses, contact Mr. Christopher Klocek, Economist, Policy Analysis and Development, PPD, APHIS, 4700 River Road Unit 119, Riverdale, MD 20737–1238; (301) 734–8667.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR part 319 (referred to below as the part 319 regulations) prohibit or restrict the importation of plants, plant parts, and plant products into the United States in accordance with the authority conferred on the Secretary of Agriculture by the Plant Protection Act (7 U.S.C. 7701–7772). The Animal and Plant Health Inspection Service (APHIS) is the United States Department of Agriculture (USDA) agency responsible for (1) enforcing the part 319 regulations and (2) considering requests to amend the part 319 regulations to allow the importation of plants, plant parts, or plant products that are not currently allowed importation under the regulations.

On June 19, 2001, APHIS published a notice in the **Federal Register** (66 FR 32923–32928, Docket No. 00–082–1) which described procedures and standards employed by APHIS in its consideration of such requests. As part of that document, we requested that persons seeking to import a new commodity [1] for which a risk analysis is required submit specific information in support of their request in order to expedite APHIS's consideration of the request. In the notice, we explained that if APHIS is provided with certain information regarding the commodity, its country of origin, and the pests associated with it, then we would be better able to consider the request and conduct the risk analysis in a timely fashion. We also explained that, after reviewing the submitted information, we may request any other associated information that may be needed to complete a risk analysis.

In this document, we are proposing to establish regulations governing the submission of requests to change the part 319 import regulations. We are proposing this action because, despite our publication of the June 2001 notice containing guidance on the submission of information in support of commodity import requests, and despite other existing guidance on this subject, few applicants provide the basic information we require to properly consider their requests. We expect that adoption of this proposal would help ensure that we are provided with the information we need to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with the

[1] For the purposes of this document, the term ''commodity'' means a plant, plant product, or other agricultural product being moved for trade or other purpose.

proposed change to the regulations. This information is needed for us to effectively consider the request, and submission of the information at the time the request is made allows us to proceed with our consideration of the request in a timely manner. Without this information, we are unable to effectively consider such requests.

The information we are proposing to require is the same type of information that we are required to provide to other countries as they evaluate commodities that we wish to export. Furthermore, the provisions of this proposal are consistent with country obligations under the International Plant Protection Convention (IPPC), to which the United States is a signatory.

Process for Considering Requests

When APHIS is requested to allow the importation of a commodity, APHIS first reviews the regulations to determine whether the commodity is enterable under existing regulations. If the commodity is enterable, APHIS may issue a permit for the importation of the commodity, subject to applicable regulations in part 319. Such cases would not require the submission of information as proposed in this document.

However, if the commodity is not yet authorized for importation under existing regulations, APHIS would have to undertake rulemaking to change the commodity's regulatory status before the commodity could be imported. The first step in this process involves determining whether it is necessary to conduct a risk analysis to analyze the pest risk associated with the importation of the commodity. When APHIS determines whether a pest risk analysis is necessary, we formally advise the requestor of that finding.

Regardless of whether or not a pest risk analysis is necessary, APHIS needs certain basic information (described in detail under the heading *Required Information*) to begin considering the request, and, in some cases, may require additional information (described under the heading *Additional Information*) to complete our evaluation. If a risk analysis is required,[2] the information is needed to conduct the analysis in accordance with the International Standard for Phytosanitary Measures (ISPM) No. 11, ''Pest Risk Analysis for Quarantine Pests,'' and its supplements, set by the IPPC. The completion of a risk analysis may be necessary to inform the Secretary as she makes her determination to allow or prohibit the importation of a commodity in accordance with the authority conferred on her by the Plant Protection Act.

Even if a risk analysis is not required to analyze the pest risk associated with the importation of the commodity,[3] the majority of the information listed under the heading *Required Information* is still needed for the purposes of other analyses that are designed to satisfy the requirements of certain U.S. statutes.[4] The following is a list of the U.S. statutes that most often have effects on the process of consideration of requests. This list is not exhaustive, but the analyses they require are the ones that depend most on certain types of information that are described in this document.

- The *Regulatory Flexibility Act* (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effect of proposed rules on small businesses, nonprofit organizations, and government jurisdictions. In order to comply with the requirements of the Regulatory Flexibility Act, for each rulemaking action, APHIS conducts an analysis on the economic effects the rule may have on small entities.
- *Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994* (Pub. L. 103–354) requires rules classified as ''major'' (having an annual impact on the economy of the United States of $100 million in 1994 dollars and whose primary purpose is to regulate issues of human health, human safety, or the environment) to be based on a thorough analysis that makes clear the nature of the risk posed by the action, alternative ways of reducing the risk, the reasoning that justifies the rule, and a comparison of the likely costs and benefits of reducing the risk.
- *The National Environmental Policy Act* (NEPA), as amended (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA require Federal agencies to consider the effects of their actions on the natural environment and identify alternatives to proposed actions. APHIS typically prepares environmental assessments, and in some cases, environmental impact statements, to evaluate the environmental effects of new imports of plants, plant parts, and plant products.
- *The Endangered Species Act,* as amended (16 U.S.C. 1531 *et seq.*) requires that Federal agencies ensure that their actions do not jeopardize the continued existence of species that are listed as threatened or endangered or adversely modify critical habitat. In certain cases, APHIS is required to enter into consultations with the U.S. Fish and Wildlife Service to provide evidence that our actions would not adversely affect threatened or endangered species or their critical habitats.

Risk analyses and other analyses required under the statutes described above are integral parts of the body of documentation that are required by law to support changes in our regulations. The findings of these analyses form the foundation of the rational basis for rulemaking required under the Administrative Procedure Act. Problems (*e.g.*, a shortage of data) with any one of these analyses can have effects on the timely processing of a request. To facilitate the completion of these analyses, we have identified the basic information that is required in any case for us to begin conducting a risk analysis and other analyses required by law. We have also identified additional information that may become necessary at some stage of the processing of the request, but that may not be required in all, or even most, cases. In this document, we are proposing to establish regulations to clarify the process for evaluating requests and the information we require to consider such requests.

The Proposed Regulations

Under the proposed regulations, which would be located in a new ''Subpart—Requests To Amend the Regulations'' (7 CFR 319.5), persons interested in the importation into the United States of commodities that have not been evaluated for entry into the United States and that are not specifically approved for importation into the United States under part 319 would be required to file a request with APHIS. The initial request could be formal (*i.e.*, a letter from the government of the exporting country) or informal (*i.e.*, a phone call to an import specialist from a foreign producer or prospective importer), and could be made by any person. Upon APHIS's confirmation that granting the person's request would necessitate revisions to the regulations in part 319 (regardless of whether a risk analysis is determined to be necessary), APHIS would notify the person that, prior to consideration of the request, the national plant protection organization of the country from which the plants, plant parts, or plant products would be

[2] **Note:** The results of a risk analysis may or may not support the proposed action.

[3] There are few cases where completion of risk analysis of some kind would not be required. The most obvious case would be if a risk analysis already exists.

[4] The only *Required Information* that may be superfluous for these analyses is information about associated pests and current risk mitigation strategies.

exported would be required to provide APHIS with the information described in proposed § 319.5(d). Requests that do not contain this information will be considered incomplete, and APHIS may not take further action on such requests until all required information is submitted. Under § 319.5(c) of the proposed regulations, this information would be required to be submitted to a designated APHIS contact point.

Required Information

The regulations in § 319.5(d) would require the following information to be provided to APHIS:

Information about the party submitting the request:

- For requests that address imports from a single country, the address, telephone and fax numbers, and e-mail addresses of the national plant protection organization of the country from which the commodity would be exported, or
- For requests that address a multi-country region, the address, telephone and fax numbers, and e-mail addresses of the exporting countries' national and regional plant protection organizations.

Information about the commodity proposed for importation into the United States:

- A description and/or map of the specific location(s) of the areas in the exporting country where the commodity is produced,
- The scientific name (including genus, species, and author names), synonyms, and taxonomic classification of the commodity,
- Identification of the particular plant or plant part (*i.e.*, fruit, leaf, root, entire plant, etc.) and any associated plant part proposed for importation into the United States,
- The proposed end use of the imported commodity (*e.g.*, propagation, consumption, milling, decorative, processing, etc.), and
- The months of the year when the commodity would be produced, harvested, and exported.

Shipping information:

- Detailed information as to the projected quantity and weight/volume of the proposed importation, broken down according to varieties where applicable, and
- Method of shipping in international commerce and under what conditions, including type of conveyance, and type, size, and capacity of packing boxes and/or shipping containers.

Description of all pests and diseases associated with the commodity proposed for exportation to the United States:

- Scientific name (including genus, species, and author names) and taxonomic classification of arthropods, fungi, bacteria, nematodes, virus, viroids, mollusks, phytoplasmas, spiroplasmas, etc., attacking the crop,
- Plant part attacked by each pest, pest life stages associated with each plant part attacked, and location of pest (in, on, or with commodity), and
- References.

Current strategies for risk mitigation or management:

- Overview [5] of agronomic or horticultural management practices used in the production of the commodity, including methods of pest risk mitigation or control programs, and
- Identification of parties responsible for pest management and control.

Additional Information

In addition to the information described above, in some cases, APHIS may require additional information to effectively consider requests to amend the part 319 regulations. We are requesting public comment as to whether some or all of this additional information should be required to be submitted with the information described above, whether some or all of the information should be considered ''optional,'' or whether APHIS should require submission of some or all of the information only if we deem it necessary during the course of our consideration of a request. We wish to make it clear that it is very much in the interest of the exporting country's national plant protection organization to provide as much of the following information as possible in order to facilitate the timely consideration of a request. If APHIS needs this information but does not receive it from the national plant protection organization of the exporting country, we must seek the information from available sources or take other appropriate action on the request. Accordingly, the consideration of requests may be delayed substantially or even denied.

Contact information:

Address, phone and fax numbers, and/or e-mail for local experts (*e.g.*, academicians, researchers, extension agents) most familiar with crop production, entomology, plant pathology, and other relevant characteristics of the commodity proposed for importation.

Additional information about the commodity:

- Common name(s) in English and in the language(s) of the exporting country,
- Cultivar, variety, or group description of the commodity,
- Stage of maturity at which crop is harvested and method of harvest,
- Indication of whether crop is grown from certified seed or nursery stock, if applicable,
- If grown from certified seed or stock, indication of the origin of the stock or seed (country, State), and
- Color photographs of plant, plant part, or plant product itself.

Information about the area where the commodity is grown:

- Unique characteristics of the production area in terms of pests or diseases,
- Maps of the production regions, pest free areas, etc.,
- Length of time commodity has been grown in production area,
- Status of growth of production area (*i.e.*, acreage expanding or stable), and
- Physical and climatological description of the growing area.

Information about post-harvest transit and processing:

- Complete description of the post-harvest processing methods used, and
- Description of the movement of the commodity from field to processing to exporting port (*e.g.*, method of conveyance, shipping containers, transit routes, especially through different pest risk areas).

Shipping methods and volume of exports:

- Photographs of the boxes and containers used to transport the commodity, and
- Identification of port(s) of export and import and expected months (seasons) of shipment, including intermediate ports-of-call and time at intermediate ports-of-call, if applicable.

Additional description of all pests and diseases associated with the commodity to be imported:

- Common name(s) of the pest in English or local language(s),
- Geographic distribution of the pest in the country, if a quarantine pest and follows the pathway,
- Period of attack (*e.g.*, attacks young fruit beginning immediately after blooming) and records of pest incidence (*e.g.*, percentage of infested plants or infested fruit) over time (*e.g.*, during the different phenological stages of the crops and/or times of the year),
- Economic losses associated with pests of concern in the country,
- Pest biology or disease etiology or epidemiology, and
- Photocopies of literature cited in support of the information above.

Current strategies for risk mitigation or manageament:

- Description of pre-harvest pest management practices (including target pests, treatments [*e.g.,* pesticides], or

[5] We specifically welcome comments as to the exact type and amount of information that can or should be submitted in support of this requirement.

other control methods) as well as evidence of efficacy of pest management treatments and other control methods,

- Efficacy of post-harvest processing treatments in pest control,
- Culling percentage and efficacy of culling in removing pests from the commodity, and
- Description of quality assurance activities, efficacy and efficiency of monitoring implementation.

Existing documentation:

- Relevant pest risk analyses, environmental assessment(s), biological assessment(s), and economic information and analyses.

Availability of Guidance on the Internet

In conjunction with this rule, we would post information related to this subject on the APHIS Internet site. The site would include a document that clearly explains the information required to be submitted at the time of the import request and the additional desirable information described in this document, background information on the rulemaking process and the analytical requirements APHIS must meet as it proposes and adopts revisions to its import regulations, and documents intended to facilitate the preparation of the information described in this document prior to submission to APHIS. We would provide a link for that Web site in our final rule.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an analysis of the potential economic effects of this final rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is set out below.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This proposed rule would require that requests to amend the regulations regarding imported plants, plant parts, or plant products be accompanied by the basic information necessary for APHIS to properly consider such requests. Receipt of necessary information (previously described in this docket) at the time a request to import a currently prohibited commodity is made will streamline the process for considering the request by minimizing delays and backlogs in conducting risk assessments and other required analyses. Streamlining the process will help facilitate trade of both imported and exported plants and plant products covered by 7 CFR part 319, and help maintain good relations between the United States and its trading partners.

Commodities in 7 CFR Part 319 Potentially Affected by the Proposed Regulations

- Fruits and Vegetables
- Cotton
- Logs, lumber
- Nursery Stock (planted in media)
- Sugarcane
- Corn, Rice, Wheat, Coffee
- Packing Material
- Cut Flowers

Streamlining the process for requesting changes to the import regulations will benefit trading partners seeking to sell their products in U.S. markets by allowing them to bring products to market in the United States in a more timely fashion. This proposed rule, if adopted, would have a positive effect on U.S. consumers who benefit from increased variety of imported products available in domestic markets and from increased competition and lower prices in affected markets. Maintaining good trade relations ensures that U.S. exports of fruits, vegetables, and other commodities would continue to flow freely into markets around the world. This would benefit U.S. exporters. Uncertainty and delays can be costly for U.S. exporters of perishable commodities, whose window for shipping fresh produce and live plants is brief. Some U.S. brokers/shippers who handle imported plants and plant products may be affected, but costs to them should be negligible.

Alternatives Considered

Two alternatives to this rule were considered. The first alternative was to do nothing. This alternative was rejected because the increased volume of import requests and growing backlog of risk assessments necessitate a mechanism for facilitating the import request process. The second alternative considered was to limit the rule to fresh fruits and vegetables only. Excluding other plant and plant parts from this rule was not seen as the most effective regulatory approach, given the growing volume and value of reciprocal trade in commodities such as grains, cotton, nursery stock, and cut flowers (*see* table 1).

Benefits of the Proposed Rule

Trade Benefits

An important benefit of expediting the risk assessment process is the continued smooth functioning of trade, particularly with countries where there is significant reciprocal trade in plants and plant products. U.S. exports of plants, plant parts, and plant products are extensive. For example, the United States exported roughly $4.26 billion in plants, plant parts, and plant products to major trading partners Mexico, Taiwan, and China in 2003. As the table below suggests, given the volume of trade in plant and plant products, delays by trading partners in processing U.S. import requests could be costly for U.S. exporters.

TABLE 1.—2003 U.S. EXPORTS OF SELECTED COMMODITIES

Commodity harmonized tariff codes (HS)	Commodity description	Value of exports (in millions of dollars)		
		Mexico	Taiwan	China
5201, 5203	Cotton	$427.658	$117.153	$733.168
4407, 4403, 4406	Lumber and logs	139.405	60.769	190.467
4415	Pallets, packing material	13.463	0.123	0.168
08	Edible fruits and nuts	256.559	134.824	50.579
07	Vegetables	110.330	27.444	9.553
1701	Sugarcane	0.785	0.034	0.001
0603	Cut flowers	1.132	0	0.021
0601, 0602	Live plants, grasses, bulbs	21.215	0.071	0.594
0604	Tubers			

TABLE 1.—2003 U.S. EXPORTS OF SELECTED COMMODITIES—Continued

Commodity harmonized tariff codes (HS)	Commodity description	Value of exports (in millions of dollars)		
		Mexico	Taiwan	China
1005	Corn	689.611	513.785	0.658
1006	Rice	140.263	34.078	0.079
1001	Wheat	402.083	136.371	35.262
0901	Coffee	1.966	0.727	0.391
Total		2,204.470	1,025.379	1,020.941

Source: *http://www.fas.usda.gov/ustrdscripts/USReport.exe.* Trade data are reported by commodity tariff code, also known as harmonized tariff schedule (HS).

Efficiency Gains

A related benefit of this proposed rule for U.S. interests is internal APHIS efficiency and consistency gains related to processing import requests. Collecting data necessary for risk assessments requires time, which delays processing of import requests.

For the past several years, APHIS has conducted approximately 100 risk assessments associated with import requests per year. Of those risk assessments, 90 percent are routine and 10 percent are complex. Examples of recent complex assessments relate to the importation of citrus from Argentina, clementines from Spain, and citrus from Uruguay. Complex risk assessments typically require 2 to 3 months for data collection by APHIS, plus trips to the country of origin. Data collection for routine risk assessments usually requires 30 days or less.

Submission of basic information with the import request will substantially decrease the amount of time required for data collection for both routine and complex risk assessments and the need for international travel to collect information. Providing information at the time an import request is made will require some expenditure of time and effort by the applicant. However, assembling data is expected to require substantially less time for the applicant than for APHIS employees, especially if the applicant is in the country of origin. Applicants in the country of origin should have knowledge of the commodity they wish to export and access to the required data.

Even when the risk analysis is not complex, or in cases where a risk analysis may not be required, the information we are proposing to require can be used to complete other analyses or documentation required by certain U.S. statutes, such as the Regulatory Flexibility Act, the National Environmental Policy Act, and the Endangered Species Act, to support changes in our regulations. Delays or problems with any of these analyses can affect the timely processing of import requests.

Costs of the Proposed Regulations

The proposed regulations would require that the national plant protection organizations of foreign countries provide specific information in support of import requests. This would require an additional expenditure of time and effort on the part of potential exporters and the exporting country's national plant protection organization, but APHIS does not expect major adjustment problems for those persons. Required information about commodities should be known to applicants and readily available.

Many foreign firms use U.S. brokers in order to facilitate the movement of consignments into the United States. The broker's primary role is to make arrangements and obtain appropriate documentation for the import and export of goods. The task of assembling required data could fall to U.S. brokers in some cases, but any adjustment should be short-lived, as importers, brokers, and governments of exporting countries work toward the common goal of expanded commerce.

APHIS believes that the benefits of this rule (streamlining the process for evaluating import requests and reducing costs to APHIS) outweigh the costs to applicants associated with gathering the basic information required by this rule.

Regulatory Flexibility Analysis

As a part of the rulemaking process, APHIS evaluates whether proposed regulations are likely to have a significant economic impact on a substantial number of small entities.[6] It is unclear whether or to what extent the data requirements of the proposed regulations would be passed on to U.S. brokers/shippers of plants and plant products. More than 11,406 brokers/shippers of plants and plant products would be considered small entities under the Small Business Administration's (SBA) criteria, but we do not expect that the proposed data requirements would have a significant impact on them.

Under the SBA's criteria, an import/export merchant is classified as a small entity if it has 100 or fewer employees.[7] In all cases, the impact would only be as a result of an entity's involvement in assembling data required for the import request.

According to the most recent information available from the SBA's Office of Advocacy, a total of 5,403 firms comprised the ''Fresh Fruit and Vegetable Merchant Wholesalers'' category in 1999.[8] Seventy-eight percent of these firms (4,227) employed 20 or fewer individuals, and 99 percent of the firms had 500 or fewer employees. Clearly, the majority of fruit and vegetable wholesalers are small entities, having 100 or fewer employees. Other types of wholesalers potentially affected by the proposed regulations (wholesalers of cut flowers and nursery stock, grain and beans, and other farm product raw materials) demonstrate similar demographic profiles, with the majority of firms in the industry considered small under SBA's criteria. Even though the majority of potentially affected wholesalers have 100 or fewer employees, and would thus be classified as small entities, the proposed regulations are not expected to have a significant economic impact on them.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil

[6] ''Guide to the Regulatory Flexibility Act.'' Small Business Administration, Office of Advocacy, Washington, DC, May 1996.

[7] North American Industrial Classification System (NAICS) 424480, Fresh Fruit and Vegtable Merchant Wholesalers.

[8] See *http://www.sba.gov/advo/stats/us99_n6.pdf.*

Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–132–1. Please send a copy of your comments to: (1) Docket No. 02–132–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under this rule, persons who wish to import an agricultural commodity into the United States that is not currently approved for importation will be required to submit certain information to APHIS in support of their request.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: U.S. importers, foreign producers and regulatory officials.

Estimated annual number of respondents: 100.

Estimated annual number of responses per respondent: 6.

Estimated annual number of responses: 600.

Estimated total annual burden on respondents: 1,200 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new ''Subpart—Requests To Amend the Regulations'' (§ 319.5) would be added to read as follows:

Subpart—Requests To Amend the Regulations

§ 319.5 Requirements for submitting requests to change the regulations in 7 CFR part 319.

(a) Definitions.

Commodity. A plant, plant product, or other agricultural product being moved for trade or other purpose.

(b) *Procedures for submitting requests and supporting information.* Persons who request changes to the import regulations contained in this part and who wish to import plants, plant parts, or plant products that are not allowed importation under the conditions of this part must file a request with the Animal and Plant Health Inspection Service (APHIS) in order for APHIS to consider whether the new commodity can safely be imported into the United States. The initial request can be formal (*e.g.*, a letter) or informal (*e.g.*, made during a bilateral discussion between the United States and another country), and can be made by any person. Upon APHIS confirmation that granting a person's request would require amendments to the regulations in this part, the national plant protection organization of the country from which the commodity would be exported must provide APHIS with the information listed in paragraph (d) of this section before APHIS can proceed with its consideration of the request; requests that are not supported with this information in a timely manner will be considered incomplete, and APHIS may not take further action on such requests until all required information is submitted

(c) *Addresses.* The national plant protection organization of the country from which commodities would be exported must submit the information listed in paragraph (d) of this section to: [Address to be added in final rule].

(d) *Information.* The following information must be provided to APHIS in order for APHIS to consider a request to change the regulations in part 319:

(1) *Information about the party submitting the request.* The address, telephone and fax numbers, and e-mail addresses of the national plant protection organization of the country from which plants, plant parts, or plant products would be exported; or, for requests that address a multi-country region, the address, telephone and fax numbers, and e-mail addresses of the exporting countries' national and regional plant protection organizations.

(2) *Information about the commodity proposed for importation into the United States.*

(i) A description and/or map of the specific location(s) of the areas in the exporting country where the plants, plant parts, or plant products are produced;

(ii) The scientific name (including genus, species, and author names), synonyms, and taxonomic classification of the commodity;

(iii) Identification of the particular plant or plant part (*i.e.*, fruit, leaf, root, entire plant, etc.) and any associated plant part proposed for importation into the United States;

(iv) The proposed end use of the imported commodity (*e.g.*, propagation, consumption, milling, decorative, processing, etc.); and

(v) The months of the year when the commodity would be produced, harvested, and exported.

(3) *Shipping information.*

(i) Detailed information as to the projected quantity and weight/volume of the proposed importation, broken down according to varieties, where applicable; and

(ii) Method of shipping in international commerce and under what conditions, including type of conveyance, and type, size, and capacity of packing boxes and/or shipping containers.

(4) *Description of pests and diseases associated with the commodity.* For all pests associated with the commodity proposed for export to the United States:

(i) Scientific name (including genus, species, and author names) and taxonomic classification of arthropods, fungi, bacteria, nematodes, virus, viroids, mollusks, phytoplasmas, spiroplasmas, etc., attacking the crop;

(ii) Plant part attacked by each pest, pest life stages associated with each plant part attacked, and location of pest (in, on or with commodity); and

(iii) References.

(5) *Current strategies for risk mitigation or management.*

(i) Overview of agronomic or horticultural management practices used in production of commodity, including methods of pest risk mitigation or control programs; and

(ii) Identification of parties responsible for pest management and control.

(e) *Availability of additional guidance.* Information related to the processing of requests to change the import regulations contained in this part may be found on the APHIS Web site at [Address to be added in final rule].

Done in Washington, DC, this 22nd day of October 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–24150 Filed 10–27–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV04–932–2 PR]

Olives Grown in California; Redistricting and Reapportionment of Producer Membership on the California Olive Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the redefinition of the producer districts and reapportionment of each district's membership on the California Olive Committee (committee). The Federal marketing order for California olives (order) regulates the handling of canned ripe olives grown in California and is administered locally by the committee. This rule would reduce the number of producer districts in the production area from four to two and would reapportion the committee representation from each district to reflect the consolidation. These changes would reflect recent shifts in olive acreage and producer numbers within the production area and would provide equitable committee representation from each district.

DATES: Comments must be received by December 27, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

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

This rule would consolidate the four existing producer districts into two larger districts. Producer representation on the committee would be reapportioned accordingly. These changes would reflect recent shifts in olive acreage and producer numbers within the production area and would assure equitable committee

representation from each district. This action was unanimously recommended by the committee at a meeting on July 8, 2004.

Section 932.21 of the order defines the producer districts as geographical areas of the State of California. Section 932.25 establishes an administrative committee of olive handlers and producers and provides for the allocation of committee membership to assure equitable producer representation from the districts. Section 932.35(k) authorizes the redefinition of the producer districts and the reapportionment of committee membership as needed to reflect shifts in olive acreage within the districts and area, numbers of growers in the districts, and the tonnage produced to assure equitable producer representation on the committee.

Currently, § 932.121 of the order's administrative rules and regulations lists and defines four producer districts within the production area. District 1 includes Glenn, Tehama and Shasta Counties. District 2 includes the counties of Mono, Mariposa, Merced, San Benito, Monterey, and all counties south thereof excluding Tulare County. District 3 includes the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof except those in District 1. District 4 includes Tulare County.

Section 932.125 specifies the producer representation on the committee. Currently, District 1 is represented by two producer members on the committee. District 2 is represented by one producer member. District 3 is represented by one producer member. District 4 is represented by four producer members.

At its meeting on July 8, 2004, the committee recommended redefining the producer districts to consolidate the four existing districts into two. The committee also recommended reapportionment of the producer membership on the committee to reflect the consolidation of the districts. The committee believes that redistricting and reapportioning the eight producer member positions and alternates would provide equitable representation throughout the production area. The committee based this recommendation on the current olive acreage and number of producers as required under the marketing order.

Total canned ripe olive acreage in the production area has declined by approximately four percent since 1994. Although production acreage in District 1 has increased by approximately 21 percent, shifts in varietal preference and challenging production conditions have led to declining acreages in the other districts. Production acreages in Districts 2, 3, and 4 have declined by approximately 34 percent, 99 percent, and 1 percent, respectively.

The number of producers in the entire production area has declined by approximately 23 percent since 1994. Some of the decline has been caused by changes in ownership of productive acreage, and some producers have stopped growing olives for cannery use. While District 1 has lost only two percent of its producers since 1994, Districts 2, 3, and 4 have lost 49 percent, 89 percent, and 29 percent, respectively. Some districts no longer have enough available or eligible producers to fill all the member seats currently allocated them on the committee.

Revisions to both the district definitions and committee membership apportionment were last made in 1987. At that time District 4 was created because Tulare County represented more than 45 percent of the average production, number of producers, and acreage of the entire production area. District 4 now represents approximately 56 percent of the canned ripe olive acreage as well as approximately 51 percent of the producers in the production area. District 4 is represented by 50 percent of the producer members and alternates on the committee.

Other districts are less equitably represented. District 1 currently has 36 percent of the total acreage in the production area and 46 percent of the producers, but is represented by only 25 percent of the committee's producer members and alternates. District 2, with nine percent of the acreage and two percent of the producers is represented by 12.5 percent of the committee members. District 3, with less than 1 percent of both the total acreage and number of producers is likewise represented by 12.5 percent of the committee's producer members and alternates.

Recent shifts in production acreage as well as the decline in producer numbers in the districts prompted the committee to recommend the consolidation of the two northern districts into one producer district, and the two southern districts into one producer district. The shifts in production acreage and the declines in producer numbers reflect similar changes in the tonnage produced.

The committee believes that it would be easier for each district to provide equitable representation on the committee if the districts with declining acreages and producer numbers were combined with districts having higher acreages and producer numbers. The pool of available producers from which to select committee members would then be increased for each producer district.

Accordingly, it was proposed that Districts 1 and 3 be combined to form a new District 1. District 1 would then include the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz and all other counties north thereof. Districts 2 and 4 would be combined to form a new District 2, which would include the counties of Mono, Mariposa, Merced, San Benito, Monterey and all other counties south thereof. Producer representation on the committee would then be reapportioned to provide three members (and alternates) from District 1 and five members (and alternates) from District 2.

These changes would benefit producers by maintaining an equitable representation on the committee as to production acreage and number of producers in each district. Under this proposal, District 1, with 36 percent of the total production acreage and 47 percent of the total number of producers would be represented by 38 percent of the producer members and alternates on the committee. District 2, with 64 percent of the total acreage and 53 percent of the total number of producers would be represented by 62 percent of the committee's producer members and alternates.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 850 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.601) defines small agricultural producers as those with annual receipts less than $750,000, and small agricultural service firms as those with annual receipts less than $5,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities, but only one of the three handlers may be classified as a small entity.

This rule would revise § 932.121 of the order's administrative rules and regulations pertaining to producer districts, and § 932.125 pertaining to producer representation on the committee. The changes would decrease the number of producer districts from four to two and would reapportion producer membership on the committee to reflect the consolidation. District 1, comprising the northern part of the production area, would be apportioned three producer members (and alternates) on the committee. District 2, comprising the southern part of the production area, would be apportioned five producer members (and alternates) on the committee. These changes would reflect recent shifts in olive acreage and producer numbers within the production area and would provide equitable committee representation from each district. The committee unanimously recommended these changes.

This rule would consolidate producer districts and reallocate producer membership on the committee; thus, there would be no additional anticipated costs to handlers or producers.

The only alternative to these changes discussed by the committee was to leave the districts and producer membership allocation as they currently exist. However, the committee believes that the recent shifts in acreage and producer numbers within the districts and production area have made these changes necessary to assure equitable producer representation from the districts.

This proposed rule would impose no additional reporting or recordkeeping requirements on California olive handlers. As with all Federal marketing order programs, reports, and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the July 8, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this matter. The proposed redistricting and reapportionment would coincide with the 2005 committee selection, which is scheduled to take place in the spring of 2005 for the new term to begin June 1, 2005.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.121 is revised to read as follows:

§ 932.121 Producer districts.

Pursuant to the authority in § 932.35(k), commencing with the term of office beginning June 1, 2005, district means any of the following geographical areas of the State of California:

(a) District 1 shall include the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof.

(b) District 2 shall include the counties of Mono, Mariposa, Merced, San Benito, Monterey and all counties south thereof.

3. Section 932.125 is revised to read as follows:

§ 932.125 Producer representation on the committee.

Pursuant to the authority in §§ 932.25 and 932.35(k), commencing with the term of office beginning June 1, 2005, representation shall be apportioned as follows:

(a) District 1 shall be represented by three producer members and alternates.

(b) District 2 shall be represented by five producer members and alternates.

Dated: October 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24089 Filed 10–27–04; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–17]

Organization of Agreement States; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a notice of receipt of a petition for rulemaking, dated September 3, 2004, which was filed with the Commission by Stanley Fitch, on behalf of the Organization of Agreement States (OAS). The petition was docketed by the NRC on October 1, 2004, and has been assigned Docket No. PRM–35–17. The petitioner requests that the NRC amend its regulations to specify the minimum number of didactic (classroom and laboratory) training hours required to meet the requirement for training and experience to qualify as an authorized nuclear pharmacist and an authorized user identified in the NRC's regulations on training for uptake, dilution, and excretion studies; imaging and localization studies; and use of unsealed byproduct material for which a written directive is required. This notice of receipt is being published for information only, not for public comment.

DATES: This petition for rulemaking was docketed on October 1, 2004.

ADDRESSES: The notice of receipt and any publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including this notice of receipt, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol

Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free 800–368–5642, or e-mail *mtl@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Petitioner

The OAS is a nonprofit, voluntary, scientific and professional society incorporated in the District of Columbia. The membership of OAS consists of state radiation control directors and staff from the 33 Agreement States who are responsible for implementation of their respective radioactive materials programs. The purpose of the OAS is to provide a mechanism for these Agreement States to work with each other and with the NRC on regulatory issues associated with their respective agreements. Agreement States are those states that have entered into an effective regulatory discontinuance agreement with the NRC under subsection 274b. of the Atomic Energy Act (AEA). The role of the Agreement State is to regulate most types of radioactive material in accordance with the compatibility requirements of the AEA.

Discussion

The petitioner requests that the NRC amend its regulations in 10 CFR 35.55, 10 CFR 35.190, 10 CFR 35.290, and 10 CFR 35.390, specify the minimum number of didactic (classroom and laboratory) training hours for the authorized nuclear pharmacists and the authorized users identified in these sections. The NRC revised 10 CFR Part 35, Medical Use of Byproduct Material, on April 24, 2002. The revised training and experience requirements in 10 CFR 35.55, 35.190, 35.290 and 35.390 require training and experience to include both classroom and laboratory training and supervised work experience, but there is no specified breakdown in these sections of these hours. The petitioner states that, in the current regulations, minimum numbers of didactic training hours for radiation safety training are not specified or separated from the total training hours. Part 35, Subpart J (which was reinserted into the current rule but will expire in October 2005), does specify a minimum number of classroom and laboratory training hours and supervised work experience.

The petitioner believes that the lack of clearly defined didactic (*i.e.*, classroom and laboratory) training hours for this rule weakens the rule's consistency and uniformity. The petitioner further believes that need for specified didactic training hours is a radiation safety issue rather than a ''practice of medicine'' issue. The petitioner also believes that radiation safety for the patient and the occupational radiation workers may be compromised. The petitioner states that a majority of radiation safety principles and procedures are learned during this classroom and laboratory training. The petitioner also asserts that the inclusion of a specification for a minimum number of hours of classroom and laboratory training ('didactic' training), in §§ 35.55, 35.190, 35.290, and 35.390, will increase consistency and uniformity of requirements between States and make it easier to maintain regulations that are consistent with the NRC's designation of requirements for training and experiences as compatibility category B.

Conclusion

The NRC is currently revising the training and experience requirements of Part 35. Among the issues being addressed in the current rulemaking is whether a minimum number of didactic training hours should be defined and specified in §§ 35.55, 35.190, 35.290 and 35.390. Therefore the NRC will address the issues raised in this petition as part of the ongoing rulemaking, ''Medical Use of Byproduct Material—Recognition of Speciality Boards (RIN No. AH19).'' A proposed rule was published in the **Federal Register** on December 9, 2003 (68 FR 68549). Because the issues raised by this petition are being considered in a current rulemaking, NRC is not instituting a separate public comment period for this action.

Dated at Rockville, Maryland, this 22nd day of October 2004.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–24097 Filed 10–27–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2003–19053; Airspace Docket No. 04–ANM–10

RIN 2120–AA66

Proposed Revision of VOR Federal Airway 208

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Federal Airway 208 (V–208) by changing the originating point of the airway from the Santa Catalina, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Ventura, CA, VORTAC. The proposed modification would extend V–208 by incorporating a route segment that air traffic control (ATC) frequently assigns to aircraft arriving at the Los Angeles, CA, terminal area. The proposed change would enhance the management of aircraft in the Southern California area.

DATES: Comments must be received on or before December 13, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2004–19053 and Airspace Docket No. 04–ANM–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2004–19053 and Airspace Docket No. 04–ANM–10) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2004–19053 and Airspace Docket No. 04–ANM–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Currently, the Southern California Terminal Radar Approach Control (TRACON) and the Los Angeles Air Route Traffic Control Center (ARTCC) issue clearances to aircraft along specified radials to separate enroute aircraft from jet aircraft departing the Los Angeles International Airport. However, these clearances increase both pilot and ATC workload. As such these facilities request that V–208 be modified to incorporate these clearances. This proposed action responds to that request.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to modify Federal airway V–208 by changing the originating point of the airway from the Santa Catalina VORTAC to the Ventura VORTAC. The revision would incorporate routing that is currently issued by ATC when managing aircraft in the Los Angeles, CA, terminal area. Extending V–208 as described above would significantly reduce pilot-controller communications, alleviate radio frequency congestion, reduce the potential for pilot readback errors, and enhance the management of aircraft operations in the Southern California area.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–208 [Revised]

From Ventura, CA 175° Santa Catalina, CA, 310° Oceanside, CA; Julian, CA; Thermal, CA; Twentynine Palms, CA; 20 miles, 24 miles 73 MSL, Needles, CA; Peach Springs, AZ; Grand Canyon, AZ; INT Grand Canyon 095° and Tuba City, AZ, 246° radials; Tuba City; Page, AZ; Hanksville, UT; Carbon, UT; Myton, UT; 79 MSL, Vernal, UT, 25 miles, 105 MSL, Cherokee, WY. The airspace within R–2503 and the airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

* * * * *

Issued in Washington, DC, October 19, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–24146 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 201, 203, 205, 215, 298, 380, 385, and 389

[Docket No. OST–2004–19426]

RIN 2105–AD43

Elimination of Commuter Air Carrier Registrations

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to amend the regulations governing air taxi

operators and commuter air carriers to eliminate the requirement that commuter air carriers file initial and amended registration forms. The information provided on such forms is duplicative of information that commuter air carriers are separately required to file under other regulations. Accordingly, the proposed amendment will simplify the process of applying for and maintaining commuter air carrier authority. The Department also proposes to make conforming amendments to other rules affected by the proposed amendment, as well as to make other minor administrative, editorial, clarifying, and organizational changes to rules applicable to air taxi operators and commuter air carriers.

DATES: Comments must received on or before December 13, 2004.

ADDRESSES: You may send comments identified by Docket No. OST–2004–19426 using any of the following methods:

- DOT Docket Web site: go to *http://dms.dot.gov* and follow the instructions for sending you comments electronically.
- Government-wide Rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Dockets Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590. *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.

FOR FURTHER INFORMATION CONTACT: Delores A. King, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Comments Invited

The Department invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to any economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments will reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with Department personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of the preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: 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 sending the comment (or signing the comment on behalf of an association, business, labor union, etc.) You may review the Department'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.*

Before acting on this proposal, 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 this proposal in light of the comments we receive.

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

Background

Air carriers operating or proposing to operate small aircraft (*i.e.,* those designed to hold 60 seats or less or 18,000 pounds payload or less) are exempt from the provisions of 49 U.S.C. 41101, which requires U.S. air carriers to hold certificates of public convenience and necessity in order to engage in interstate and/or foreign air transportation operations. This exemption is conditioned upon the air carrier meeting the registration, insurance and other requirements set for in part 298 of the Department's Economic Regulations (14 CFR part 298). Air carriers operating under a part 298 exemption are generally referred to as ''air taxi operators.''

A ''commuter air carrier,'' as defined in part 298, is an air taxi operator that carriers passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule that specifies the times, days of the week, and places between which those flights are performed.

To register as an air tax operator (whether or not commuter air carrier operations are involved), an air carrier must submit a registration form (OST Form 4507) that asks for basic information about the company, including name, address, telephone and fax numbers, types of operations being performed, Federal Aviation Administration (FAA) office overseeing the carrier's operations, list of aircraft being used in the operation, and whether the company is a U.S. citizen. Evidence of current insurance coverage that meets the requirements of part 205 of the Department's regulations must accompany the registration. If the information on the registration form subsequently changes, the carrier is required to submit an amendment to the Department within 30 days reflecting the change.

In addition, section 298.21(d) requires a commuter carrier to be found ''fit, willing and able'' to conduct its scheduled passenger operations in addition to meeting the registration and insurance requirements of the rule. In making that fitness determination, the Department requires companies proposing to operate as a commuter air carrier to file an application and submit data to the Department in accordance with 14 CFR parts 201 and 204. Once the Department determines the company is fit to provide its proposed scheduled passenger operations, the Department issues a Commuter Air Carrier Authorization with accompanying terms, conditions, and limitations to the air carrier.

Statement of Proposed Action

The fitness requirements and the process for obtaining authority for commuter air carriers are nearly identical to those applicable to companies seeking certificates of public convenience and necessity under 49 U.S.C. 41101. In fact, many companies that propose to operate small aircraft (under 60 seats of 18,000 pounds payload) and that would otherwise qualify for commuter authority choose instead to seek a certificate. At present, approximately 35 carriers hold commuter authority from the Department; of the approximately 145 carriers that currently hold certificates of public convenience and necessity, approximately 60 operate small aircraft only. In addition, both commuter air carriers and certificated air carriers must notify the Department under 14 CFR 204.5 of any substantial changes in their operations, ownership, or management. Unlike commuters, however, certificated air carriers are not required to file registration forms or amendments.

Since the fitness and licensing requirements for commuter air carriers

are so closely aligned to those for certificated air carriers operating similar aircraft, we propose to revise the regulations to eliminate the requirement that commuter air carriers file initial and amended registration forms as currently required by part 298, thus relieving commuters from the often duplicative burden of filing registration forms and amendment as well as initial and updated fitness information.

All of the information contained on OST Form 4507 is filed by commuter applicants requesting a fitness determination under 14 CFR 204.5. Once found fit, commuters are required to notify the Department of substantial changes in their operations, ownership, or management. In addition to these substantial change notifications, the Department periodically requests updated fitness information from commuter air carriers. We believe that these requirements and procedures provide the Department an adequate opportunity to obtain relevant information regarding commuter air carriers. Under these circumstances, we believe that the separate registrations and amendments required of commuters under part 298 are no longer necessary and can be eliminated. These changes will not, however, affect the requirement that other air taxi operators must still file registrations and amendments with the Department, nor will they relieve commuters of any other requirements or provisions of part 298 applicable to their operations. This includes submitting evidence of liability insurance coverage which, under the proposal, would be filed with the Program Management Branch (AFS–260) of the Federal Aviation Administration, just as air taxi registrations and insurance and certificated air carrier insurance currently are.

Section-by-Section Analysis of Proposal

We propose to reorganize part 298 to reflect the changes discussed above, to codify current Department policies or procedures, and to improve the clarity of the party. This section-by-section analysis explains the proposed amendments to each subpart of the rule.

Subpart A—General

In this subpart, we propose to reclassify commuter air carriers from being a subset of air taxi operators to their own class of carrier that operate small aircraft in scheduled passenger service, and to amend sections 298.1, 298.2, and 298.3 accordingly. We also propose to amend section 298.4 to include the address for obtaining a statement of authority, and to eliminate section 298.5.

Section 298.1 Applicability

We propose to add a reference in section 298.1 to indicate that part 298 applies to both air taxi operators and commuter air carriers.

Section 298.2 Definitions

We propose to amend the definitions of ''air taxi operator'' and ''commuter air carrier'' to reference revised sections 298.3(a) and (b) (*see* Section 298.3 Classification, below). For purposes of clarity and convenience, we proposed to add definitions of ''statute'' to refer to subtitle VII of title 49 of the United States Code, ''eligible place'' with respect to operations by commuters as contained in 49 U.S.C. 41731(a)(1), and ''citizen of the United States'' as contained in 49 U.S.C. 40102(a)(15). We are also proposing to add the word ''originally'' before the word ''designed'' in the definition of ''large aircraft'' to codify our long-held interpretation of that definition as we recently reiterated in Order 2002–9–4. Finally, we propose to amend the definition of ''small aircraft'' so that it no longer merely indicates that it is the ''opposite'' of ''large aircraft,'' but instead sets out the specific seating and payload limitations applicable to small aircraft. As discussed below in section 298.5, we are also deleting the definition of ''all-cargo air carrier or section 41103 carrier'' as no longer necessary for purposes of this part.

Section 298.3 Classification

The Department proposes to amend section 298.3 to reclassify commuter air carriers as their own class of carrier that operate small aircraft in scheduled passenger service and do not hold certificates, but that do hold Commuter Air Carrier Authorizations (see revised section 298.3(b)). We propose to delete the references in section 298.3(a) to the requirement that commuters must file registration forms, and adopt a new ''Subpart E—Commuter Air Carrier Authorizations,'' that describes the requirements for obtaining commuter authority. As a result of these changes, we propose to renumber old section 298.3(b) as section 298.3(c).

Section 298.4 Requests for Statement of Authority

We propose to add the mailing address of the Director, Office of Aviation Analyses for ease in requesting a statement of authority.

Section 298.5 Dual Operations—Air Taxi or Commuter Air Carrier and All-Cargo Service

We propose to eliminate section 298.5 which authorizes air taxi and commuter operations by air carriers holding All-Cargo Air Service Certificates issued under 49 U.S.C. 41103 (formerly section 418 of the Federal Aviation Act). There currently are no certificated air carriers that hold only all-cargo certificates issued under 49 U.S.C. 41103—all such carriers also hold certificates issued under 49 U.S.C. 41102. Moreover, no applications pursuant to 49 U.S.C. 41103 have been received in a number of years—most carriers preferring to receive certificates under 49 U.S.C. 41102 for scheduled all-cargo authority, which also confer charter all-cargo rights. Small aircraft operations by carriers holding certificates issued under 49 U.S.C. 41102 are specifically authorized by 14 CFR 206.5 under the same terms and conditions as air taxi and commuter operations; thus section 298.5 is redundant and can be eliminated, along with the references to that section in sections 298.3(a)(1) and (2) and current section 298.3(b) (renumbered section 298.3(c)).

Subpart B—Exemptions

In this subpart, we proposed to re-designate current section 298.13 as section 298.12. All other sections in this subpart remain unchanged.

Subpart C—Registration for Exemption by Air Taxi Operators

This subpart is currently titled ''Registration and Reregistration for Exemption.'' We propose to re-title this subpart as ''Registration for Exemption by Air Taxi Operators'' to eliminate an obsolete reference to ''re-registrations''. Also, as discussed below, we propose to amend all sections in this subpart (sections 298.21 through 298.24) to eliminate references to commuter air carriers and make other clarifying or organizational changes.

Section 298.21 Filing for Registration by Air Taxi Operators

Currently, this section states that all air taxi operators, regardless of whether or not they are operating as commuter air carriers, must file a registration with the Department. We propose to amend this section to remove the requirement for commuter air carriers to file registrations.

We also propose to make administrative changes to this section. Specifically, we propose to replace the reference to the Director, Office of Aviation Analysis in 298.21(a) with a reference to the Manager, Program

Management Branch (AFS–260) of the FAA—the office that processes air taxi registrations—and amend sections 298.21(c) and (d) to clarify the addresses where air taxi registrations should be filed. Further, we propose to clarify the requirements for air taxi operators engaged in foreign air transportation or participating in an interline agreement. Specifically, we are proposing to delete section 298.21(c)(4) to eliminate the requirement that air taxi operators engaged in foreign air transportation or participating in an interline agreement must file OST Form 4523—counterpart to Agreement 18900—and, instead, include a new section 298.21(c)(1)(ix) that references language currently contained on the registration form (OST Form 4507) certifying that the air taxi operator complies with Agreement 18900 and certifying that the information submitted on the registration form is complete and accurate. Finally, we propose to move the current requirement of section 298.21(d), which prohibits an air taxi from operating scheduled passenger service unless it has first been found fit by the Department as a commuter air carrier, to new section 298.32.

Section 298.22 Processing by the Department

In this section, we propose to replace the obsolete reference to registration form ''298–A'' with the correct form number ''OST Form 4507.''

Section 298.23 Notification of the Department of Change in Operations

We propose to amend section 298.23(a) to clarify that amended air taxi registrations are to be submitted whenever any of the information contained on the most recently filed registration form changes. In doing so, we will replace the specific listing of items with a more general statement that applies to any of the information on the registration. We have also added a provision stating that filing fees are not required when submitting an amendment to a registration form. Section 298.23(b) will be amended to reflect the current addresses where amended air taxi registrations are to be submitted.

Section 298.24 Cancellation of the Registration

We propose to amend this section, which sets out circumstances under which the Department may cancel registrations issued under part 298, to eliminate all references to commuter air carriers, since the suspension or revocation of a commuter's authority will now be addressed in new section 298.53. In addition, we propose to specify additional circumstances beyond those currently contained in this section under which an air taxi registration may be cancelled. Specifically, these include (1) an air taxi operator's failure to remain a U.S. citizen under 49 U.S.C. 40102(a)(15) (amended section 298.24(e)), and (2) other circumstances under which the Department determines that it is in the public interest to cancel a company's registration (new section 298.24(f)). These changes merely clarify that an air taxi operator must remain a U.S. citizen to hold authority under part 298 as is required under the statute, and that the Department has the ability to cancel the exemption authority awarded to an air taxi if the Department determines that it is in the public interest to do so.

Subpart D—Limitations and Conditions on Exemptions and Operations

In this subpart, we propose to add sections 298.32 and 298.33 and amend sections 298.32, 298.35 and 298.36.

Section 298.31 Scope of Service and Equipment Authorized

As discussed in Section 298.2 above, we propose to add the word ''originally'' before the word ''designed'' to codify our long-held interpretation that aircraft operated under this part must have been originally designed to hold no more than 60 seats or 18,000 pounds payload.

Section 298.32 Limitations on Operations to Eligible Places

As mentioned previously, we propose to move, without change, the provisions of current section 298.21(d), which prohibits a commuter air carrier from operating without first having its fitness determined, to new section 298.32.

Section 298.33 Security Requirements

We propose to add this new section to clarify that, like certificated air carriers, air taxi operators and commuter air carriers must comply with security requirements established by the U.S. Government for such carriers. This imposes no new obligations on air taxis or commuters.

Section 298.35 Limitations on Carriage of Mail

We propose to amend this section to clarify that ''Postal Service'' as used in that section refers to the ''U.S. Postal Service.''

Section 298.36 Limitations on Use of Business Name

We propose to amend this section to clarify that a commuter may only hold out to the public in the name in which its Commuter Air Carrier Authorization is issued or in which another trade name is registered in accordance with part 215 (see revised section 298.36(a)). For clarity, we propose to revise paragraph (d) of this section to indicate that the Department is not precluded from intervening or taking enforcement action should there be evidence of a significant potential for, or actual, public confusion as a result of the use of a particular name.

Section 298.38 Financial Security Arrangements for Operating Public Charters

This section was previously titled ''Security arrangements for operating Public Charters.'' We propose to amend the title of this section to clarify that this section refers to financial security requirements to avoid any confusion with general security requirements. In addition, we propose to replace an obsolete reference to 14 CFR 207.17 with the correct reference to 14 CFR 212.8.

Subpart E—Commuter Air Carrier Authorizations

We propose to add a new subpart E, ''Commuter Air Carrier Authorizations.'' This subpart prescribes rules pertaining to commuter air carrier authority.

Section 298.50 Applications

This proposed new section contains directions for filing an application for a Commuter Air Carrier Authorization. In this section, we are not proposing any new requirements; rather, we are setting out provisions from other parts of the Department's regulations to clarify in part 298 the actions required by applicants requesting a Commuter Air Carrier Authorization (*e.g.,* an original and two copies of the application must be filed with the Department's Dockets section, accompanied by the information required by 14 CFR 204 and the $670 filing fee). These requirements are found currently in sections 201.1 and 389.25.

Section 298.51 Processing by the Department

This proposed new section states that applications for commuter authority will be processed in accordance with the procedural provisions of sections 302.207–302.211 which are applicable to certificated air carriers but have been followed by the Department in processing applications for commuter air carrier authority. Thus, the section imposes no new requirements on commuter applicants.

Section 298.52 Air Taxi Operations by Commuter Air Carriers

Proposed section 298.52(a) provides that, during such time as a commuter holds an *effective* Commuter Air Carrier Authorization, it may also conduct air taxi-type operations (*e.g.*, scheduled and on-demand cargo, on-demand passenger service, and scheduled passenger services consisting of less than four weekly round trips in a market pursuant to a published schedule) under part 298 without having to file a separate air taxi registration. Proposed section 298.53(b) provides that, if the carrier ceases its scheduled passenger commuter operations, resulting in the suspension of its commuter authority, it can continue to conduct other air taxi operations authorized by this part, provided that it registers as an air taxi operator under section 298.21 within 10 days of such cessation and complies with all other requirements applicable to air taxi operators under part 298 (including, for example, maintaining insurance coverage as required by part 205 and retaining appropriate FAA authority).

Section 298.53 Suspension or Revocation of Authority

Proposed section 298.53 sets out circumstances under which the Department may suspend or revoke a Commuter Air Carrier Authorization. They also include the two additional requirements previously discussed in connection with changes to section 298.24 (see the discussion above on section 298.24).

Subparts F Through H

No amendments are being made to subpart F, ''Reporting Requirements,'' subpart G, ''Public Disclosure of Data,'' and subpart H, ''Violations.''

Amendments to Other Rules

To reflect the elimination of commuter registrations, we propose to make conforming amendments to other rules. We are also taking this opportunity to propose other minor administrative amendments to the Department's regulations. Affected rules include the following:

We propose to amend section 201.1(b) to remove the reference to commuter registrations by deleting the word ''registration'' in the first sentence.

We propose to amend section 203.3 to remove outdated references to the Department's ''Office of Aviation Analysis, Special Authorities Division'' as the source for obtaining OST Forms 4507 and 4523, replacing it with a reference to instructions in part 298 and 14 CFR 294 on where to obtain these forms.

We propose to amend sections 205.4(a), (b), and (c) and 205.7(a) to remove the outdated references to the ''Office of Aviation Analysis'' as the recipient of, and source for, certificate of insurance forms (OST Forms 6410 and 6411) and other notices of insurance changes. A revised section 205.4(c) is added to reflect the correct addresses at the Department where insurance certificates and endorsements are to be filed.

We propose to amend section 215.3 to delete in the second sentence obsolete references to 14 CFR 221.21(j) and 221.35(d).

We propose to amend section 215.4(a) to delete the references to commuter registrations and amendments in the second sentence. The word ''commuter'' is added in the fourth sentence after the words ''underlying certificate''; the word ''or'' is eliminated before ''foreign air carrier''; and the word ''permit'' is eliminated and replaced with a comma (''.'') after ''foreign air carrier''.

We propose to amend section 215.6 to delete the reference to commuter registrations.

In section 380.2, we propose to amend the definition of ''direct air carrier'' to add the word ''commuter'' after the word ''certificate'' and before the words ''or foreign air carrier'', to delete the reference to ''commuter air carrier'' after ''air taxi operator,'' and to add ''authorization'' after the word ''certificate'' and before the word ''permit'' to reflect that commuters receive a Commuter Air Carrier Authorization.

We propose to amend section 385.12(e) to remove the reference to commuter air carriers.

We propose to amend section 389.25(a), code 7, to read ''Commuter Air Carrier Authorization * * * $670.''

Paperwork Reduction Act

OMB Information Collection Number: 2120–0633.

Title of Information Collection: Exemptions for Air Taxi and Commuter Air Carrier Operations.

Affected Public: Commuter air carriers and applicants for commuter air carrier authority.

Brief Abstract: Applicants for authority to operate as an air taxi operator or commuter air carrier under 14 CFR part 298 are required to submit a registration form (OST Form 4507) that asks for basic information about the company (such as, name, address, telephone/fax numbers, types of operations being performed, Federal Aviation Administration (FAA) operating certificate, aircraft operated, and whether the company is a U.S. citizen). Once registered with the Department, the air taxi or commuter air carrier is required to submit an amendment to the Department when information on the registration changes. The proposed amendment here will eliminate this registration requirement for commuter air carriers—since the information required on the registration is duplicative of information provided to the Department elsewhere—thus resulting in a reduction in the above-noted paperwork collection.

Burden Hours: The amendment proposed here will result in a diminution of the regulatory burden on affected parties. There are approximately 35 currently-authorized commuter air carriers subject to this reporting requirement, and new applicants for commuter authority over the past three years have averaged approximately four per year. The paperwork burden of this reporting requirement on commuter air carriers varies depending on the extent to which the information on the registration changes. A carrier does not need to submit further forms if the information contained in a registration does not change. As a result, the number of registration forms filed will vary. Based on our recent experience in this area, we have estimated approximately two amended registrations per currently-authorized commuter air carrier plus one registration for each new commuter applicant. Thus, we estimate the reduction in the paperwork burden for these carriers to be, on an annual basis, approximately 74 responses (4 new and 70 amended OST Forms 4507s) and 37 burden hours (74 responses × .5 hours per response).

Cost to the Respondents: We have previously estimated the average cost of completing and submitting a new or amended OST Form 4507 to be approximately $20.00. Thus, we estimate the cost savings to respondents of the proposed elimination of commuter registrations to be approximately $1,480 (74 responses × $20 per response).

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the Department's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The Department has determined that there are no ICAO Standards and Recommended Practices that

correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Provisions

Executive Order 12866, Regulatory Planning and Review, directs the Department to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this rulemaking indicates that its economic impact is minimal because the rule will not impose any new costs on the affected commuter air carriers; in fact, it relieves them of a filing requirement with the attendant costs and burdens. The remaining changes are administrative and editorial in nature and primarily reflect organizational and procedural changes within the Department. This rulemaking is non-significant under DOT policies and procedures and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) directs the Department to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as they are defined in the Act. If we find that the action will have a significant impact, we must do a ''regulatory flexibility analysis.''

This proposed rule relieves commuter air carriers from filing registration forms and amendments, and it reorganizes some of the regulations applicable to commuter air carriers. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessments

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The Department has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposal does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The Department has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

14 CFR Part 201

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 203

Air carriers, Air transportation, Foreign relations, Insurances, Reporting and recordkeeping requirements.

14 CFR Part 205

Air carriers, Freight, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 215

Air carriers, Reporting and recordkeeping requirements, Trade Names.

14 CFR Part 298

Air taxis, Reporting and recordkeeping requirements.

14 CFR Part 380

Charter flights, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Part 385

Organization and functions (Government agencies).

14 CFR Part 389

Administrative practice and procedure, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons set forth in the preamble, the Department proposes to amend title 14, chapter II of the Code of Federal Regulations as follows:

PART 201—AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES CODE

1. The authority citation for Part 201 continues to read as follows:

Authority: 5 U.S.C. 1008; 49 U.S.C. Chapters 401, 411, 413, 415, 417.

§ 201.1 [Amended]

2. In § 201.1(b), remove the word ''registration'' in the first sentence.

PART 203—WAIVER OF WARSAW CONVENTION LIABILITY LIMITS AND DEFENSES

3. The authority citation for Part 203 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 415, 417.

§ 203.3 [Amended]

4. In § 203.3, in the second sentence remove the words ''with the Department's Office of Aviation Analysis'' and add, in their place, ''in accordance with the provisions of those parts'', and remove the last sentence.

PART 205—AIRCRAFT ACCIDENT LIABILITY INSURANCE

5. The authority citation for Part 205 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 417.

6. Amend § 205.4 as follows:

A. Revise paragraph (a) to read as set forth below;

B. Amend paragraph (b) by removing the words ''Department's Office of Aviation Analysis'' in the first sentence and adding, in their place, ''Department at the addresses specified in paragraph (c) of this section''; and

C. Revise paragraph (c) to read as set forth below.

The revisions read as follows:

§ 205.4 Filing of evidence of insurance.

(a) A U.S. or foreign air carrier shall file a certificate of insurance or a complete plan for self-insurance with the Department. Each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times. The Department will normally notify the

carrier within 20 days of receipt if the certificate or plan does not meet the requirements of this part. Certificates of Insurance shall be filed on OST Form 6410 for U.S. air carriers, including commuter air carriers and air taxi operators, and OST Form 6411 for foreign air carriers, including Canadian air taxi operators. The Department may return the certificate or self-insurance plan to the carrier if it finds for good cause that such certificate or plan does not show adequate evidence of insurance coverage under this part. Forms may be obtained from and should be filed with the Department at the addresses specified in paragraph (c) of this section. Forms may also be obtained on the Internet at *http://ostpxweb.dot.gov/aviation.*

* * * * *

(c) Certicates of insurance and endorsements required in paragraphs (a) and (b) of this section shall be submitted to the Department of Transportation, Federal Aviation Administration, Program Management Branch, AFS–260, 800 Independence Avenue, SW., Washington, DC 20591. For those air carriers that have a mailing address in the State of Alaska, the forms shall be submitted to the Department of Transportation, Federal Aviation Administration, Alaskan Region Headquarters, AAL–230, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513. For Canadian air taxis, the forms shall be submitted to the Department of Transportation, Special Authorities Division, X–46, 400 7th Street SW., Washington, DC 20590.

§ 205.7 [Amended]

* * * * *

9. In § 205.7(a), remove the words ''Department's Office of Aviation Analysis (or, for Alaskan air taxi operators, to the Department's Alaska Field Office)'' and add, in their place the words ''Department at the addresses specified in § 205.4(c)''.

PART 215—USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS

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

Authority: 40 U.S.C. chapters 401, 411, 413, 417.

§ 215.3 [Amended]

11. In § 215.3, in the second sentence, remove the words ''Except as provided in §§ 221,21(J) and 221.35(d) of this chapter,''.

§ 215.4 [Amended]

12. In § 215.4(a), in the second sentence, remove the words '', as well as any commuter air carrier registration or amendment filed under part 298,'' and add the word ''commuter'' after ''certificate,'' in the fourth sentence.

§ 215.6 [Amended]

13. In § 215.6, remove the words ''or in approving the commuter registration,'' in the first sentence.

PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS

14. The authority citation for part 298 continues to read as follows:

Authority: 49 U.S.C. 329 and Chapters 401, 411, 417.

15. Amend Part 298 by revising Subparts A through E to read as follows:

PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS

Subpart A—General

Sec.
298.1 Applicability of part.
298.2 Definitions.
298.3 Classification.
298.4 Requests for statement of authority.

Subpart B—Exemptions

298.11 Exemption authority.
298.12 Duration of exemption.

Subpart C—Registration for Exemption by Air Taxi Operators

298.21 Filing for registration by air taxi operators.
298.22 Processing by the Department.
298.23 Notifications to the Department of change in operations.
298.24 Cancellation of the registration.

Subpart D—Limitations and Conditions on Exemptions and Operations

298.30 Public disclosure of policy on consumer protection.
298.31 Scope of service and equipment authorized.
298.32 Limitation on operations to eligible places.
298.33 Security requirements.
298.34 [Reserved]
298.35 Limitations on carriage of mail.
298.36 Limitations on use of business name.
298.37 Prohibition of services not covered by insurance.
298.38 Financial security arrangements for operating Public Charters.

Subpart E—Commuter Air Carrier Authorizations

298.50 Application.
298.51 Processing by the Department.
298.52 Air taxi operations by commuter air carriers.
298.53 Suspension or revocation of authority.

Subpart A—General

§ 298.1 Applicability of part.

This part establishes classifications of air carriers known as ''air taxi operators'' and ''commuter air carriers,'' provides certain exemptions to them from some of the economic regulatory provisions of subtitle VII of title 49 of the United States Code (Transportation), specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in interstate and/or foreign air transportation in all States, Territories and possessions of the United States. This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

§ 298.2 Definitions.

As used in this part:

Air taxi operator means an air carrier as established by § 298.3(a).

Air transportation means interstate air transportation, foreign air transportation, or the transportation of mail aircraft as defined by the Statute [1]

Aircraft-hours means the airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight stage.

Aircraft miles means the miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern.

[1] *Interstate air transportation* is defined in section 40102(a)(25) as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft (1) between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (2) when any part of the transportation is by aircraft. **Note:** Operations wholly within the geographic limits of a single State are not considered interstate air transportation if in those operations the carrier transports no more than a *de minimus* volume of passengers or property moving as part of a continuous journey to or from a point outside the State.

Foreign air transportation is defined in section 40102(a)(23) of the Statute as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside of the United States and when any part of the transportation is by aircraft.

Air transportation also is defined to include the transportation of mail by aircraft. Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators and commuter air carriers in some circumstances under contract with the U.S. Postal Service.

Certificated air carrier means an air carrier holding a certificate issued under section 41102 of the Statute.

Citizen of the United States means:

(1) An individual who is a citizen of the United States;

(2) A partnership each of whose partners is an individual who is a citizen of the States; or

(3) A corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

Commuter air carrier means an air carrier as established by § 298.3(b) that carriers passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

Departure means takeoff from an airport.

Eligible place means a place in the United States that—

(1)(i) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(ii) Received scheduled air transportation at any time after January 1, 1990; and

(iii) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of chapter 417 of the Statute; or

(2) Was determined, on or after October 1, 1988, and before the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, by the Department to be eligible to receive subsidized small community air service under section 41736(a) of the Statute.

Flight stage means the operation of an aircraft from takeoff to landing.

Large aircraft means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

Maximum certificated takeoff weight means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate.[2]

Maximum passenger capacity means the maximum number of passenger seats for which an aircraft is configured.

Maximum payload capacity means the maximum certificated take-off weight of an aircraft, less the empty weight,[3] less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for the weight of the crew, oil, and fuel is as follows:

(1) Crew—200 pounds per crew member required under FAA regulations,

(2) Oil—350 pounds,

(3) Fuel—The minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart,[4]

Provided, however, That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA,[5] maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

Mile means a statute mile, *i.e.,* 5,280 feet.

Nonrevenue passenger means a person traveling free or under token charges, except those expressly named in the definition of revenue passenger; a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. (This definition is for 14 CFR part 298 traffic-reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the transportation Security Administration for the collection of passenger Facility Charges and Security Fees.) The definition includes, but is not limited to, the following examples of passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement:

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business or traveling to or from such duty;

(8) Guests of an air carrier on an inaugural flight or delivery flights or newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties or traveling to or from such duty;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) persons engaged in promoting air transportation;

(14) Air marshals and other Transportation Security officials acting in their official capacities and while traveling to and from their official duties; and

(15) Other authorized persons, when such transportation is undertaken for promotional purpose.

Passengers carried means passengers on board each flight stage.

Point when used in connection with any territory or possession of the United States, or the States of Alaska and Hawaii, means any airport or place where aircraft may be landed or taken off, including the area within a 25-mile radius of such airport or place; when used in connection with the continental United States, except Alaska, it shall have the same meaning except be

[2] This weight may be found in the airplane operating record or in the airplane flight manual, which is incorporated by regulation into the airworthiness certificate.

[3] Empty weight is defined in section 03 of part 241 as follows: the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

[4] Assumes VFR weather conditions and flights not involving extended overwater operations.

[5] The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.

limited to the area within a 3-mile radius of such airport or place: Provided, That for the purposes of this part, West 30th Street Heliport and Pan Am Building Heliport, both located in New York City, shall be regarded as separate points.

Reporting carrier for Schedule T–100 purposes means the air carrier in operational control of the light, i.e., the carrier that uses its flight crews under its own FAA operating authority.

Revenue passenger means a passenger for whose transportation an air carrier receives commercial remuneration. (This definition is for 14 CFR part 298 traffic-reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) This includes, but is not limited to, the following examples:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth, student, etc.);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

Revenue passenger-mile means one revenue passenger transported one mile. Revenue passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

Revenue seat-miles available means the aircraft-miles flown on each flight stage multiplied by the number of seats available for sale on that flight stage.

Revenue ton-mile means one ton of revenue traffic transported one mile. Revenue ton-miles are computed by multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage and converted to ton-miles by dividing total revenue pound-miles by 2,000 pounds.

Revenue ton-miles available means the aircraft-miles flown on each flight stage multiplied by the number of pounds of aircraft capacity available for use on that stage and converted to ton-miles by dividing total pound-miles available by 2,000 pounds.

Scheduled service means transport service operated over routes pursuant to published flight schedules or pursuant to mail contracts with the U.S. Postal Service.

Small aircraft means any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

Small certificated air carrier means an air carrier holding a certificate issued under section 41102 of the Statute that provides scheduled passenger air service within and between only the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands with small aircraft as defined in this section.

Statute means Subtitle VII of title 49 of the United States Code (Transportation).

Ton means a short ton, *i.e.,* 2,000 pounds.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

§ 298.3 Classification.

(a) There is hereby established a classification of air carriers, designated as ''air taxi operators,'' which directly engage in the air transportation of persons or property or mail or in any combination of such transportation and which:

(1) Do not directly or indirectly utilize large aircraft in air transportation;

(2) Do not hold a certificate of public convenience and necessity and do not engage in scheduled passenger operations as specified in paragraph (b) of this section;

(3) Have and maintain in effect liability insurance coverage in compliance with the requirements set forth in part 205 of this chapter and have and maintain a current certificate of insurance evidencing such coverage on file with the Department;

(4) If operating in foreign air transportation or participating in an interline agreement, subscribe to Agreement 18900 (OST Form 4523 or OST Form 4507) and comply with all other requirements of part 203 of this chapter; and

(5) Have registered with the Department in accordance with subpart C of this part.

(b) There is hereby established a classification of air carriers, designated as ''commuter air carriers,'' which directly engage in the air transportation of persons, property or mail, and which:

(1) Do not directly or indirectly utilize large aircraft in air transportation;

(2) Do not hold a certificate of public convenience and necessity;

(3) Carry passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed;

(4) Have and maintain in effect liability insurance coverage in compliance with the requirements set forth in part 205 of this chapter and have and maintain a current certificate of insurance evidencing such coverage on file with the Department;

(5) Have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523) and comply with all other requirements of part 203 of this chapter; and

(6) Hold a Commuter Air Carrier Authorization issued in accordance with subpart E of this part.

(c) A person who does not observe the conditions set forth in paragraph (a) or (b) of this section shall not be an air taxi operator or commuter air carrier within the meaning of this part with respect to any operations conducted while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part.

§ 298.4 Requests for statement of authority.

In any instance where an air taxi operator or commuter air carrier is required by a foreign government to produce evidence of its authority to engage in foreign air transportation under the laws of the United States, the Director, Office of Aviation Analysis (X–50), Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, will, upon request, furnish the carrier with a written statement, outlining its general operating privileges under this part for presentation to the proper authorities of the foreign government.

Subpart B—Exemptions

§ 298.11 Exemption authority.

Air taxi operators and commuter air carriers are hereby relieved from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to conduct air taxi or commuter air carrier operations:

(a) Section 41101;

(b) Section 41504; except that the requirements of that section shall apply to:

(1) Tariffs for through rates, fares, and charges filed jointly by air taxi operators or commuter air carriers with air carriers or with foreign air carriers subject to the tariff-filing requirements of Chapter 415; and

(2) Tariffs required to be filed by air taxi operators or commuter air carriers which embody the provisions of the counterpart to Agreement 18900 as specified in part 203 of this chapter;

(c) Section 41702, except for the requirements that air taxi operators and commuter air carriers shall:

(1) Provide safe service, equipment, and facilities in connection with air transportation;

(2) Provide adequate service insofar as that requires them to comply with parts 252 and 382 of this chapter;

(3) Observe and enforce just and reasonable joint rates, fares, and charges, and just and reasonable classifications, rules, regulations and practices as provided in tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers; and

(4) Establish just, reasonable, and equitable divisions of such joint rates, fares, and charges as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers;

(d) Section 41310, except that the requirements of that subsection shall apply to through service provided pursuant to tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers and to transportation of the handicapped to the extent that that is required by part 382 of this chapter.

(e) Section 41902;

(f) Section 41708.

§ 298.12 Duration of exemption.

The exemption from any provision of the Statute provided by this part shall continue in effect only until such time as the Department shall find that enforcement of that provision would be in the public interest, at which time the exemption shall terminate or be conditioned with respect to the person, class of persons, or service (e.g., limited-entry foreign air transportation market) subject to the finding.

Subpart C—Registration for Exemption by Air Taxi Operators

§ 298.21 Filing for registration by air taxi operators.

(a) Every air taxi operators who plans to commence operations under this part shall register with the Department not later than 30 days prior to the commencement of such operations, unless, upon a showing of good cause satisfactory to the Manager, Program Management Branch (AFS–260), Federal Aviation Administration, registration within a lesser period of time is allowed.

(b) The registration of an air taxi operator shall remain in effect until it is amended by the carrier or canceled by the Department.

(c) Registration by all air taxi operators shall be accomplished by filing with the Department at the address specified in paragraph (d) of this section the following:

(1) Air Taxi Registration (OST Form 4507), executed in duplicate.[6] This form shall be certified by a responsible official and shall include the following information:

(i) The name of the carrier and its mailing address;

(ii) The carrier's principal place of business, if different from its mailing address, and its telephone number and fax number;

(iii) The carrier's FAA certificate number, if any, and the address and telephone number of the carrier's local FAA office;

(iv) The type of service the carrier will offer (scheduled passenger,[7] scheduled cargo, mail under a U.S. Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations);

(v) A list of the aircraft that the carrier proposes to operate, or, in the case of an amendment to the registration, the aircraft that it is currently operating in its air taxi operations, and the aircraft type, FAA registration number and passenger capacity of each aircraft;

(vi) For initial registration, the proposed date of commencement of air taxi operations;

(vii) For amendment, whether the carrier has carried passengers in foreign air transportation during the previous 12 months;

(viii) Whether the carrier is a citizen of the United States; and

(ix) A certification that the registration is complete and accurate and that, if the carrier is engaged in foreign air transportation, or participating in an interline agreement, it subscribes to the terms of Agreement 18900 (*see* OST Form 4523).

(2) A certificate of insurance (OST Form 6410) which is currently effective (or in case of initial registration, is to become effective), as defined in part 205 of this chapter;

(3) An 8 dollar ($8) registration filing fee in the form of a check, draft, or postal money order payable to the Department of Transportation.

(d) Registrations required in paragraph (c) of this section shall be submitted to the Department of Transportation, Federal Aviation Administration, Program Management Branch (AFS–260), 800 Independence Avenue, SW., Washington, DC 20591. For those air taxi operators that have a mailing address in the State of Alaska, the registrants shall be filed with the Department of Transportation, Federal Aviation Administration, Alaskan Region Headquarters (AAL–230), 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

§ 298.22 Processing by the Department.

After examination of the OST Form 4507 submitted by the carrier, the Department will stamp the effective date of the registration on the form and return the duplicate copy to the carrier to confirm that it has registered with the Department as required by this part. The effective date of the registration shall not be earlier than the effective date of the insurance policy or policies named in the certificate of insurance filed by the carrier under § 298.21(c)(2).

§ 298.23 Notifications to the Department of change in operations.

(a) If any of the information contained on its registration changes, an air taxi operator shall submit an amendment reflecting the updated information. This amendment shall be filed no later than 30 days after the change occurs. There is no filing fee for submitting an amendment.

(b) An amendment shall be made by resubmitting OST Form 4507 to the Department of Transportation, Federal Aviation Administration, Program Management Branch (AFS–260), 800 Independence Avenue, SW., Washington, DC 20591. If the air taxi operator has a mailing address in the State of Alaska, the form shall be mailed to the Department of Transportation, Federal Aviation Administration, Alaskan Region Headquarters, (AAL–230), 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

[6] OST Form 4507 can be obtained from the Manager, Program Management Branch, Federal Aviation Administration, AFS–260, or on the World Wide Web at *http://www.faa.gov/avr/afs/afs200/afs260/Part298.cfm.*

[7] Companies proposing to provide scheduled passenger service at the level established by this Part for commuter air carriers are not permitted to conduct such operations under their air taxi registration; such companies must first be found fit, willing and able to operate and be issued a Commuter Air Carrier Authorization by the Department.

§ 298.24 Cancellation of the registration.

The registration of an air taxi operator may be canceled by the Department if any of the following occur:

(a) The operator ceases its operations;

(b) The operator's insurance coverage changes or lapses;

(c) The operator fails to file an amended registration when required by § 298.23;

(d) The operator's Air Carrier Certificate and/or Operations Specifications is revoked by the Federal Aviation Administration;

(e) The operator fails to qualify as a citizen of the United States;

(f) The Department determines that it is otherwise in the public interest to do so.

Subpart D—Limitations and Conditions on Exemptions and Operations

§ 298.30 Public disclosure of policy on consumer protection.

(a) Every air taxi and commuter air carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public, containing a statement setting forth the air taxi and commuter air carrier's policy on baggage liability and denied boarding compensation.

(b) An air taxi or commuter air carrier shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in § 254.5 of this chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

§ 298.31 Scope of service and equipment authorized.

Nothing in this part shall be considered as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators and commuter air carriers that register with the Department extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

§ 298.32 Limitation on operations to eligible places.

No person shall provide scheduled passenger service as a commuter air carrier at an eligible place unless it has been found by the Department to be fit, willing, and able to conduct such service and issued a Commuter Air Carrier Authorization as provided in subpart E of this part.

§ 298.33 Security requirements.

In conducting operations under this part, an air taxi operator or a commuter air carrier is required to adhere to all security requirements established by the Department of Transportation and the Department of Homeland Security applicable to such operations.

§ 298.34 [Reserved]

§ 298.35 Limitations on carriage of mail.

An air taxi operator or commuter air carrier is not authorized to carry mail except pursuant to contract with the U.S. Postal Service entered into pursuant to section 5402 of the Postal Reorganization Act (39 U.S.C. 5402).

§ 298.36 Limitations on use of business name.

(a) An air taxi operator or commuter air carrier in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier certificate is issued pursuant to section 44702 of the Statute by the Federal Aviation Administration, and in which it is registered with the Department under this part, or in which its Commuter Air Carrier Authorization is issued or other trade name is registered.

(b) Slogans shall not be considered names for the purposes of this section, and their use is not restricted hereby.

(c) Commuter air carriers are subject to the provisions of part 215 of this chapter with regard to the use and change of air carrier names.

(d) Neither the provisions of this section nor the grant of a permission hereunder shall preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

§ 298.37 Prohibition of services not covered by insurance.

An air taxi operator or commuter air carrier shall not operate in air transportation or provide or offer to provide air transportation unless there is in effect liability insurance which covers such transportation and which is evidenced by a current certificate of insurance on file with the Department as required by part 205 of this chapter.

§ 298.38 Financial security arrangements for operating Public Charters.

When an air taxi operator or commuter air carrier performs a Public Charter under part 380 of this chapter, either:

(a) The air taxi operator or commuter air carrier shall meet the bonding or escrow requirements applicable to certificated air carriers as set forth in § 212.8 of this chapter; or

(b) The air taxi operator or commuter air carrier shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for air transportation until the charter has been completed, notwithstanding any provision of part 380 of this chapter.

Subpart E—Commuter Air Carrier Authorizations

§ 298.50 Application.

(a) Any person desiring to provide air transportation as a commuter air carrier must first obtain a Commuter Air Carrier Authorization. This shall be accomplished by filing with the Department—

(1) An application in accordance with the requirements of parts 201 and 302 of this chapter;

(2) Data in accordance with part 204 of this chapter to support a determination by the Department that the person is ''fit, willing, and able'' to operate the proposed commuter service; and

(3) A $670 filing fee in the form of a check, draft, or postal money order payable to the Department of Transportation.

(b) An executed original and two true copies of an application for a Commuter Air Carrier Authorization shall be filed with Department of Transportation Dockets, 400 7th Street, SW., PL–401, Washington, DC 20590.

§ 298.51 Processing by the Department.

In processing applications filed in accordance with § 298.50, the Department will generally follow the procedures set forth in §§ 302.07 through 302.211 of this chapter.

§ 298.52 Air taxi operations by commuter air carriers.

(a) A commuter air carrier that holds an effective Commuter Air Carrier Authorization and otherwise meets the requirements of this part is also authorized to conduct air taxi

operations (*e.g.,* scheduled cargo, mail under a U.S. Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations) without having to meet the registration requirements of subpart C of this part, except as provided in paragraph (b) of this section.

(b) Should a commuter air carrier cease conducting all scheduled passenger operations and its Commuter Air Carrier Authorization is suspended pursuant to §§ 298.53 and/or 204.7 of this chapter, it may continue to conduct air taxi operations *provided that* the carrier maintains in effect liability insurance coverage as required for such operations by part 205 of this chapter and, within 10 days of the cessation of scheduled passenger operations, registers as an air taxi operator in accordance with subpart C of this part; and *provided further* that the carrier continues to hold authority from the Federal Aviation Administration to conduct such air taxi operations.

§ 298.53 Suspension or revocation of authority.

A Commuter Air Carrier Authorization may be suspended or revoked if any of the following occur:

(a) The operator fails to maintain insurance coverage as required by part 205 of this chapter for commuter operations;

(b) The scheduled passenger authority under the operator's Air Carrier Certificate is suspended or revoked by the Federal Aviation Administration;

(c) The operator does not commence operations for which it has been found fit, or the operator ceases those operations as provided in § 204.7 of this chapter;

(d) The Department finds that the carrier is not fit, willing, and able to conduct scheduled service or fails to qualify as a citizen of the United States; or

(e) The Department determines that it is otherwise in the public interest to do so.

PART 380—PUBLIC CHARTERS

16. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41301, 41504, 41702, 41708, 41712, 46101.

§ 380.2 [Amended]

17. In § 380.2 in the definition of *Direct air carrier* add the word '', commuter'' after ''certificated''; remove the words ''or commuter air carrier'' after ''air taxi operator'' the first time that term is used; and add ''authorization,'' between ''certificate'' and ''permit''.

PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

18. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. subtitle I, chapters 401, 411, 413, 415, 417.

§ 385.12 [Amended]

19. In § 385.12(e), remove the words ''and commuter air carriers''.

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

20. The authority citation for part 389 continues to read as follows:

Authority: Sec. 204, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

§ 389.25 [Amended]

21. In § 389.25(a), in the table, under the entry Code 7, remove the words ''Scheduled Passenger Commuter Registration'' and add, in their place, ''Commuter Air Carrier Authorization''.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 04–23859 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041018283-4283-01; I.D. 102204C]

RIN 0648-AS81

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery

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

ACTION: Proposed interim rule; request for comments.

SUMMARY: NMFS proposes to implement the days-at-sea (DAS) allocation procedure contained in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) under Magnuson-Stevens Act interim rule authority. This DAS allocation procedure established a DAS baseline allocation based on historic participation in the NE multispecies DAS fishery. The proposed rule to implement Amendment 13 did not include an explicit provision that would have capped a vessel's annual DAS usage at the vessel's DAS allocation prior to August 1, 2002, the annual DAS allocation for the 2001 fishing year (May 1, 2001 - April 30, 2002). To rectify the omission of the DAS usage cap in the proposed rule, NMFS added language to include the cap in the regulatory text of the final rule implementing Amendment 13 to ensure that the DAS baseline procedure complied with NMFS' understanding of the New England Fishery Management Council's (Council) intent. To address the fact that the public was not provided with the opportunity to comment on the DAS usage cap, NMFS proposes to implement the DAS allocation procedure including the cap, as an interim rule through proposed and final rulemaking so as to provide opportunity for public comment consistent with the Administrative Procedure Act (APA).

DATES: Comments must be received on or before 5 P.M., local time, November 12, 2004.

ADDRESSES: Written comments on the proposed interim rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to *DASprocedure@noaa.gov*. Include in the subject line the following: ''Comments on the Proposed Interim Rule for the DAS Allocation Procedure.''
- Federal e-Rulemaking Portal: *http://www.regulations.gov*
- Mail: Comments submitted by mail should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on the Proposed Interim Rule for the DAS Allocation Procedure.''
- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281–9135.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this action, which is contained in the Classification section of this proposed interim rule.

Copies of the Final Supplemental Environmental Impact Statement (FSEIS) and Regulatory Impact Review (RIR) prepared for Amendment 13 and supporting this action are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950. The FSEIS

and RIR are also accessible via the internet at *http://www.nefmc.org/nemulti/*.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 to the FMP was developed by the Council to end overfishing and rebuild NE multispecies stocks managed under the authority of the Magnuson-Stevens Act. One of the management strategies used in Amendment 13 to achieve these objectives was to identify and then reduce effective effort. Effective effort is the number of DAS that are actually fished by fishing vessels in contrast to the number of DAS that are allocated. To reduce effective effort, Amendment 13 established a new DAS baseline allocation for individual vessels based on recent participation in the NE multispecies DAS fishery, and then reduced the number of DAS available to achieve a target fishing mortality level. The final rule implementing Amendment 13 became effective on May 1, 2004 (69 FR 22906).

The proposed rule for Amendment 13 (69 FR 4362, January 29, 2004) stated that a vessel's DAS baseline allocation would be determined by the highest number of reported DAS fished during a single qualifying fishing year in which the vessel landed at least 5,000 lb (2,268 kg) of regulated multispecies during the 6-year period from May 1, 1996, through April 30, 2002. The proposed rule did not include an explicit provision, however, that would have capped a vessel's annual DAS usage at the vessel's annual DAS allocation prior to August 1, 2002; that is, the vessel's DAS allocation during the 2001 fishing year. NMFS determined, before publishing the final rule to implement Amendment 13, that it was the intent of the Council to include such a cap on DAS usage, even though the Amendment 13 document did not include explicit language referring to the cap. This determination was based, in part, on the fact that Amendment 13 and its FSEIS analyzed the DAS baseline allocation calculation assuming that a vessel's DAS usage was capped at its DAS allocation for the 2001 fishing year. The FSEIS also assumed the cap would exclude carryover DAS from consideration in the calculation of a vessel's DAS baseline allocation. This analysis was used as the baseline level of DAS from which DAS reductions were calculated in order to limit the total number of Category A DAS to a level that was likely to meet the Amendment 13 fishing mortality objectives. To implement the final rule without an explicit cap would have been inconsistent with the Council's stated objective of reducing DAS to a level necessary to meet fishing mortality objectives. Therefore, NMFS added explicit regulatory language to include the cap in the final rule implementing Amendment 13 to ensure consistency with the intent of the Council, as NMFS understood that intent.

The validity of the DAS usage cap provision in the final rule implementing Amendment 13 has been called into question by certain members of the fishing industry because NMFS added the cap language to the regulatory text at the final rule stage, without giving the public an opportunity to comment on the new regulatory language, and because there was no explicit language in Amendment 13 referring to a cap on DAS usage. To address any concerns that the DAS usage cap provision may have been promulgated without a full opportunity for public comment and to avoid any possibility of the cap being invalidated in mid-fishing year, this action proposes to establish the DAS baseline allocation procedure that had been included in the final rule implementing Amendment 13 to the FMP as an interim rule under the authority of section 305(c) of the Magnuson-Stevens Act. Section 305(c) of the Magnuson-Stevens Act provides that the Secretary of Commerce may implement an interim rule on a temporary basis to reduce overfishing. If the cap were removed through the above mentioned legal challenge, then the total number of allocated DAS would increase, as more fully discussed in the IRFA discussion below, by 8.9 percent over the current allocation, thereby significantly increasing the possibility of overfishing. To avoid this increased possibility of overfishing, this interim rule is necessary and justified under the Magnuson-Stevens Act. Moreover, it provides the public an opportunity to comment on the inclusion of the cap.

This interim rule would establish a definition of the DAS baseline allocation identical to the Amendment 13 final rule. Therefore, no change in the regulatory language would be required to implement the final interim rule.

This proposed interim rule, if adopted, would ensure that the DAS usage cap is in place for the entire 2004 fishing year (May 1, 2004 - April 31, 2005), leaving the existing 2004 DAS allocations unchanged. In the meantime, the Council is developing a framework adjustment action (Framework 40-B to the FMP) that would implement, on a permanent basis, its current intent concerning the inclusion of the DAS usage cap in the DAS baseline allocation procedure. It is anticipated that, if approved, Framework 40-B will become effective May 1, 2005.

Classification

NMFS determined that the proposed interim rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The proposed action would implement the DAS allocation procedure adopted in the final rule implementing Amendment 13, but not explicitly recommended in that amendment. The impacts of this DAS allocation procedure were thoroughly analyzed in the FSEIS prepared for Amendment 13. Specifically, the biological impacts were analyzed in sections 5.2.5.6, 5.2.6.1, and 5.2.8.4, the economic impacts were analyzed in section 5.4.9.4.5, the social impacts were analyzed in section 5.6.2.2.1.1, and the cumulative impacts were analyzed in section 5.7.7.2 of the FSEIS. A notice of availability for the FSEIS prepared for Amendment 13 was published in the Federal Register on February 6, 2004 (69 FR 5856), with a 30-day cooling off period. NMFS decided to partially approve Amendment 13 on March 18, 2004, and, in the record of decision (ROD) signed on March 18, 2004, concluded that all practicable means to avoid, minimize, or compensate for environmental harm resulting from the measures contained in the amendment had been adopted. This action would not change the DAS allocation procedure implemented in the final rule for Amendment 13 and analyzed in Amendment 13 FSEIS, but establish it through the proposed rulemaking process in order to afford the public an opportunity to comment on the procedure. Therefore, because this action does not change the determinations made in the FSEIS for Amendment 13 and in the corresponding ROD, further environmental review under the National Environmental Policy Act is not necessary.

Pursuant to the procedures established to implement section 6.0 of Executive Order 12866, the Office of Management and Budget has determined that this proposed interim rule is not significant.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered and the legal basis for the action are contained in the preamble to this proposed interim rule. This proposed interim rule does not duplicate, overlap, or conflict with any relevant Federal rules. The universe of small entities to which this rule would apply is contained in the IRFA of the proposed rule implementing Amendment 13 and is not repeated here. This rule would not impose any additional reporting, recordkeeping or other compliance requirements that are not already in existence as a result of the final rule implementing Amendment 13.

As mentioned above, this proposed interim rule is being promulgated under the authority of section 305(c) of the Magnuson-Stevens Act. The proposed rule to implement Amendment 13 omitted the DAS usage cap from the DAS baseline procedures, but NMFS added regulatory language to the Amendment 13 final rule to implement such a cap. This action would establish the DAS baseline allocation procedure contained in the Amendment 13 final rule consistent with the rulemaking procedures set forth under the APA.

Two alternatives were considered for purposes of the initial regulatory flexibility analysis: (1) the groundfish fishery without a DAS usage cap for the 2004 fishing year; and (2) a DAS usage cap as analyzed in Amendment 13. The analysis suggests that the lack of a DAS usage cap would increase the number of Category A DAS by 8.9 percent (approximately 3,900 A DAS) over the original allocation of A DAS under Amendment 13. The allocation of A DAS would therefore rise to approximately 47,689 days from the present level of 43,773 days. This increase in A DAS would benefit 390 vessels with an average increase of 10.8 A DAS (ranging from 0.02 to 52.69 A DAS) per vessel. Amendment 13 analyzed the average daily returns by vessel category and concluded that average daily returns while fishing on a DAS would range from $1,139 to $2,683 depending on the vessel category. Assuming that additional A DAS were re-allocated to the fishery, individual vessels may realize these net returns. However, net returns may not be uniform within each vessel category because of the variation in number of A DAS that would be expected to return to the fishery (i.e., 0.02 to 52.69 A DAS). Individual vessels would also need to consider other variables in combination with their allocated A DAS to determine the likelihood of exact changes in vessel profitability. The preferred alternative as analyzed within Amendment 13 assumes the DAS usage cap is in place and the NE multispecies fishery is operating based on the DAS allocation procedure specified in the final rule for Amendment 13. In this case, the establishment of a DAS usage cap, as set forth in the final rule, would neither affect the costs of current fishing operations for individual vessels, nor would it impose any additional compliance costs on NE groundfish vessels. DAS allocations to individual vessels would remain unchanged, giving each vessel the same opportunity to earn revenues as they exist in the present fishery. In addition, there would be no change to individual vessel profitability resulting from the maintenance of the present DAS schedule. Furthermore, the NE multispecies fleet has been operating under a DAS usage cap for the past two years as a result of a series of interim and emergency actions taken by NMFS resulting from the *Conservation Law Foundation* v. *Evans* litigation (67 FR 50292, August 1, 2002; 68 FR 2919, January 22, 2003; and 68 FR 38234, June 27, 2003). Individual vessels have received reduced DAS allocations based on this cap and have already experienced economic impacts that would be similar to those resulting from the existence of the DAS usage cap for the 2004 fishing season.

Implementing the preferred alternative (*i.e.,* capping the DAS baseline at a vessel's 2001 allocation) is critical in order to be consistent with the intent of the Council's goal of fishing capacity reduction. Allowing vessels to have a baseline DAS allocation that exceeds the level of recent historic allocation is counter to the stated goal of Amendment 13's alternatives to control capacity. The non-preferred alternative would also have the potential of slowing rebuilding efforts and would lead to additional DAS reductions in future years, thus resulting in greater adverse economic impacts. Finally, operating the fishery without a DAS usage cap and inserting the extra effort back into the fishery would not be consistent with Amendment 13 and the goals and objectives the Magnuson-Stevens Act and its national standards.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 22, 2004

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.82, paragraph (c)(1) introductory text is republished to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in §648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

* * * * *

[FR Doc. 04–24104 Filed 10–25–04; 2:01 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 208

Thursday, October 28, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee (''the Committee'').

DATES: November 16, 2004, 7:30 a.m. to 5 p.m.; and November 17, 2004, 7:30 a.m. to 1:30 p.m.

ADDRESSES: The Advisory Committee meeting will take place at the Iberville Suites, 910 Iberville Street, New Orleans, LA 70112.

Requests to address the Committee at the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be Faxed to (202) 205–9237.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Henry, (202) 205–8281 (telephone); (202) 690–2755 (facsimile).

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include Enterprise Architecture, Process Verification, ISO evaluation, Phytosanitary Certification, New Soybean Traits, Ethanol Co-Products/DDG Standards, Outsourcing: Rice Program, and general Agency issues. For a copy of the agenda please contact Terri Henry, (202) 205–8281 (telephone); (202) 690–2755 (facsimile) or by e-mail *Terri.L.Henry@usda.gov*.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

Dated: October 25, 2004.

Donna Reifschneider,

Administrator.

[FR Doc. 04–24117 Filed 10–27–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Proposals: Section 516 Farm Labor Housing (FLH) New Construction or Repair Grants and Emergency Grants To Assist Low-Income Migrant and Seasonal Farmworkers

Announcement Type: Initial Request for Proposals (RFP) inviting proposals from qualified applicants.

Catalog of Federal Domestic Assistance Number (CFDA): 10.405.

SUMMARY: The Rural Housing Service announces the availability of funds and the timeframe to submit applications for grants to construct or repair Section 516 off-farm FLH. In addition, this RFP also announces an availability of funds and the timeframe to submit applications for grants to provide emergency services to assist low-income migrant and seasonal farmworkers. Both of these funding opportunities are designed to meet needs in communities that were affected by hurricanes and tropical storms in calendar year 2003 or 2004, as authorized by the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, Public Law 108–324 (October 13, 2004).

DATES: The deadline for receipt of all applications in response to this RFP is 5 p.m., Eastern Daylight Time, on December 27, 2004. The application closing deadline is firm as to date and hour. The Agency will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Douglas H. MacDowell, Senior Loan Specialist, Multi-Family Housing Processing Division—STOP 0781 (Room 1263–S), U.S. Department of Agriculture—Rural Housing Service, 1400 Independence Ave., SW., Washington, DC 20250–0781 or by telephone at (202) 720–1627. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget under Control Number 0575–0045.

Overview

The Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations, 2005, Public Law 108–324 (October 13, 2004), made available $5,000,000 for the provision of low-rent housing and related facilities for domestic farm labor, as authorized by Section 516 of the Housing Act of 1949. Of this amount, up to $3,000,000 may be used for emergency services to assist low-income migrant and seasonal farmworkers, as authorized by section 2281 of the Food, Agriculture, Conservation, and Trade Act of 1990.

Program Administration

I. Funding Opportunities Description

This RFP requests applications from eligible applicants for grants to construct or repair section 516 off-farm FLH. The Agency's Farm Labor Housing Program is authorized by the Housing Act of 1949. Grants for the construction or repair of off-farm FLH are authorized by section 516 (42 U.S.C. 1486) of the Housing Act of 1949. Agency regulations for the Farm Labor Housing Program are published at 7 CFR part 1944, subpart D. Eligibility for section 516 off-farm FLH grants is limited to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, and public agencies (such as housing authorities).

Housing that is constructed or repaired with these grants must meet the Agency design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, section 516 off-farm FLH must be managed in accordance with the program's management regulation, 7 CFR part 1930, subpart C. Tenant eligibility is limited to ''domestic farm laborer'', as defined by 7 CFR part 1944, subpart D, at 7 CFR 1944.153. That definition is ''a person who receives a substantial portion of his or her income performing farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person.'' The term ''farm labor'', as used in the definition of domestic farm labor, includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity. In addition, section 516 off-farm FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless of which farm they work at. Rental assistance is not available through this Notice.

This RFP also requests applications for the purpose of providing emergency services to low-income migrant and seasonal farmworkers. Grants for emergency services will be awarded separate and apart from the grants for the construction and repair of section 516 housing and is not subject to the same limitations. Eligibility for grants for emergency services is limited to public agencies or private organizations with tax exempt status under section 501(c)(3) of Title 26 United States Code that have experience in providing emergency services to low-income migrant and seasonal farmworkers where the Secretary of Agriculture determines that a local, state, or national emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, be unable to work, or to stay at home or return home in anticipation of work shortages. The types of service could include, but are not limited to, assistance in meeting rent or mortgage payments, utility bills, child care, transportation, school supplies, food, repair or rehabilitation of farmworker housing (not restricted to units financed by the Agency), facilities related to farmworker housing such as an infirmary for emergency care of a child care facility, and the construction of new farmworker housing units. A low-income migrant or seasonal farmworker is defined by section 2281 of the Food, Agriculture, Conservation, and Trade Act of 1990 as an individual:

(1) Who has, during any consecutive 12 month period within the preceding 24 month period, performed farm work for wages;

(2) Who has received not less than one-half of such individual's total income, or been employed at least one-half of total work time in farm work; and

(3) Whose annual family income within the 12 month period referred to in paragraph (1) does not exceed the higher of the poverty level or 70 percent of the lower living standard income level.

The ''lower living standard income level'' referred to in paragraph (3) was defined in a Department of Labor, **Federal Register** Notice entitled ''Workforce Investment Act; Lower Living Standard Income Level,'' dated June 25, 2004, (69 FR 35679–35685). Copies of that Notice shall be made available on request.

Applicants who seek funding for both the construction or repair of section 516 off-farm FLH and to provide emergency services to low-income migrant and seasonal farmworkers, must submit separate, individual applications for each grant purpose.

II. Award Information

The Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, Public Law 108–324 (October 13, 2004), made available $5,000,000 for the provision of low-rent housing and related facilities for domestic farm labor, as authorized by section 516 of the Housing Act of 1949. Of this amount, up to $3,000,000 may be used for emergency services to assist low-income migrant and seasonal farmworkers, as authorized by section 2281 of the Food, Agriculture, Conservation, and Trade Act of 1990.

Grants to provide emergency services may not exceed $500,000 and may be limited by geographic area so that multiple grant recipients are not providing similar services to the same service areas. Grants for the construction or repair of section 516 off-farm FLH are not limited to $500,000, but the grant may not exceed 90 percent of the total development cost of the housing.

III. Eligibility Information

Applicant Eligibility

(1) *To be eligible to receive a grant for the construction or repair of section 516 off-farm FLH,* the applicant must be a broad-based nonprofit organization, a nonprofit organization of farmworkers, a federally recognized Indian tribe, or an agency or political subdivision of a State or local government, or a public agency (such as a housing authority) and:

(a) Be an organization, as defined in 7 CFR 1944.153 with an assured life over a period of years sufficient to carry out the purpose of providing low-rent housing for domestic farm labor. This should not be less than the anticipated useful life of the project as suitable housing for domestic farm labor, assuming proper maintenance and repair of the property. Ordinarily, this should not be less than 50 years.

(b) When the grant is closed, be the owner of the housing and related facilities, including the site.

(c) Be unable to provide the necessary housing from its own resources, including any power to levy taxes, assessments, or charges, and be unable to obtain the necessary credit through a labor housing loan or from other sources upon terms and conditions the applicant could reasonably be expected to fulfill.

(d) Possess the legal and actual capacity, ability, and experience to incur and carry out the undertakings and obligations required, including the obligations to maintain and operate the housing and related facilities for the purpose for which the grant is made.

(e) Legally obligate itself not to divert income from the housing to any other business, enterprise, or purpose.

(f) In addition, eligibility is limited to projects in communities affected by hurricanes and tropical storms in calendar year 2003 or 2004. Applicants must provide documentation to evidence that they meet all of these eligibility requirements.

(2) *To be eligible to receive a grant to provide emergency services to low-income migrant and seasonal farmworkers,* the applicant must:

(a) Be either a public agency or private organization with tax exempt status under section 501(c)(3) of Title 26 United States Code.

(b) Have experience in providing emergency services to low-income migrant and seasonal farmworkers where the Secretary of Agriculture determines that a local, state, or national

emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, be unable to work, or to stay at home or return home in anticipation of work shortages.

(c) Be limited to projects in communities affected by hurricanes and tropical storms in calendar year 2003 or 2004. Applicants must provide documentation to evidence that they meet all of these eligibility requirements.

Cost sharing or matching. Grants for the construction or repair of section 516 off-farm FLH may not exceed 90 percent of the total development cost. There are no cost sharing or matching requirements for grants for emergency services.

Other Administrative Requirements

(1) The following policies and regulations apply to grants made in response to this RFP:

(a) The policies and regulations contained in 7 CFR part 1901, subpart E regarding equal opportunity requirements.

(b) The requirements of 7 CFR part 3015, and 7 CFR part 3016 or 7 CFR part 3019 (as applicable), which establish the uniform administrative requirements for grants and cooperative agreements to state and local governments and to non-profit organizations.

(c) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties.

(d) The policies and regulations contained in 7 CFR part 1940, subpart G regarding environmental assessments.

(2) The following additional policies and regulations also apply to grants for the construction or repair of section 516 off-farm FLH:

(a) The policies and regulations contained in 7 CFR part 1944, subpart D regarding the grant authorities of the Farm Labor Housing Program.

(b) The policies and regulations contained in 7 CFR part 1924, subpart A regarding planning and construction.

(c) The policies and regulations contained in 7 CFR part 1924, subpart C regarding the planning and performing of site development work.

(e) The policies and regulations contained in 7 CFR part 1930, subpart C regarding the management and supervision of section 516 off-farm FLH.

IV. Application and Submission Information

Applicants who seek funding for both the construction or repair of section 516 off-farm FLH and for emergency services to low-income migrant and seasonal farmworkers, must submit separate, individual applications for each grant purpose.

The application process will be in two phases: the initial preapplication (or proposal) and the submission of a formal application. Only those proposals that are selected for funding will be invited to submit formal applications. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded preapplication may be selected. If a preapplication is accepted for further processing, the applicant will be expected to submit the additional information prior to the obligation of grant funds. At the time of final grant approval, the Agency and grant recipients shall enter into a grant agreement.

Preapplication Requirements

The preapplication must contain the following:

(1) A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

(a) Identification of the grant purpose (*i.e.,* for the construction or repair of section 516 off-farm FLH or for providing emergency services to low-income migrant and seasonal farmworkers). As stated in this Notice, separate, individual applications must be submitted for each grant purpose.

(b) Applicant's name.

(c) Applicant's Taxpayer Identification Number.

(d) Applicant's address.

(e) Applicant's telephone number.

(f) Name of applicant's contact person, telephone number, and address.

(g) Amount of grant requested.

(h) Applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405).

(2) A narrative describing the applicant's ability to meet the eligibility requirements stated in this Notice.

(3) A detailed Statement of Work.

(4) An organizational plan that includes a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of employee duties to achieve the objectives of the grant program.

(5) Organizational documents to evidence the applicant's status as a properly organized private or public nonprofit agency which meets the applicant eligibility requirements and financial statements to evidence the applicant's financial ability to carry out the objectives of the grant program.

(6) A detailed budget plan projecting the monthly and annual expenses the grantee will incur. Costs will be limited to those that are allowed under 7 CFR part 3015, and 7 CFR part 3016 or 3019, as applicable.

(7) Applicants must submit documentation that the community was affected by a hurricane or tropical storm in calendar year 2003 or 2004.

(8) Applicants for grants to provide emergency services to low-income migrant and seasonal farmworkers must include a narrative describing its knowledge, demonstrated ability, or practical experience in delivering direct emergency assistance to low-income migrant and seasonal farmworkers. In addition, to ensure that funds are equitably distributed, and that there is no duplication of efforts on related projects, applicants must clearly identify the geographic area that they intend to serve and provide documentation that they have the experience and ability to service those areas.

(9) Applications for grants to construct or repair section 516 off-farm FLH must also include all of the information, materials, forms, and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the requirements of this Notice. Each application must also include an estimate of development cost utilizing Form RD 1924–13, ''Estimate and Certificate of Actual Cost,'' and a proposed operating budget utilizing Form RD 1930–7, ''Multiple Family Housing Project Budget.'' Applicants must provide documentation that there is a pressing need for such facilities and that there is a reasonable doubt that the housing can be provided without the grant assistance.

(10) A separate one-page information sheet listing each of the ''Application Scoring Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicant's are also encouraged, but not required, to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

Funding Restrictions

Grants to provide emergency services may not exceed $500,000 and may be limited by geographic area so that multiple grant recipients are not providing similar services to the same service areas. Grants for emergency services may not be used for pre-award costs.

Grants for the construction or repair of section 516 off-farm FLH are not limited to $500,000, but the grant may not exceed 90 percent of the total development cost of the housing. Grants for the construction or repair of section 516 off-farm FLH is subject to the limitations and conditions listed at 7 CFR 1944.164.

All grants made in response to this Notice are subject to the restrictions contained in 7 CFR parts 3015, 3016, and 3019.

Intergovernmental review. The construction of new section 516 off-farm FLH is subject to the Intergovernmental Review provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Submission address. Preapplications should be submitted to USDA—Rural Housing Service; Attention: Douglas H. MacDowell, Multi-Family Housing Processing Division—STOP 0781 (Room 1263–S), 1400 Independence Ave. SW., Washington, DC 20250–0781.

V. Application Review Information

All applications will be evaluated by a grant committee. The grant committee will make recommendations to the Agency Administrator concerning preliminary eligibility determinations and for the selection of applications for further processing based on the selection criteria contained in this RFP and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the closing date of the RFP.

Applications for grants to construct or repair section 516 off-farm FLH will compete against other applications to construct or repair section 516 off-farm FLH. Likewise, applications for grants to provide emergency services to low-income migrant and seasonal farmworkers will compete against other applications for grants for emergency services.

Applications for grants to provide emergency services to low-income migrant and seasonal farmworkers will be evaluated by the types of assistance to be provided. Because the types of assistance may differ depending on the geographic area to be served and the nature of the disaster or emergency experienced, equal weight will be applied to each form of assistance to be rendered.

Selection Criteria

(1) Applications to provide emergency services to low-income migrant and seasonal farmworkers will be scored on the following basis:

(a) Experience of applicant providing emergency services.

(b) The number of low-income migrant and seasonal farmworkers (as defined in this Notice) affected by the emergency.

(c) The number of low-income migrant and seasonal farmworkers (as defined in this Notice) to be assisted by the proposal.

(d) Economic and social benefits to low-income migrant and seasonal farmworkers (as defined in this Notice) and their families from the services to be provided.

(2) Proposals for construction or repair of section 516 off-farm FLH for domestic farm laborers will be scored on the following basis:

(a) The number of domestic farm laborers (as defined in 7 CFR part 1944, subpart D) that will be provided with decent, safe and sanitary housing as a result of the proposed use of the grant funds.

(b) The degree to which health and safety issues will be addressed through the use of the grant funds.

Dated: October 22, 2004.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 04–24099 Filed 10–27–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Sunshine Act Meetings

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, November 4, 2004.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. FY 2005 Budget status.
2. Year end Program report.
3. Privatization discussion.
4. Administrative and other issues.

ACTION: Board of Directors meeting.

TIME AND DATE: 9 a.m., Friday, November 5, 2004.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the August 10, 2004, board meeting.
3. Secretary's Report on loans approved, FY 2004.
4. Treasurer's Report.
5. Privatization discussion.
6. Establish date for next Board meeting.
7. Governor's Remarks.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Curtis M. Anderson,

Acting Governor, Rural Telephone Bank.

[FR Doc. 04–24159 Filed 10–25–04; 4:21 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–823]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand

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

EFFECTIVE DATE: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Natalie Kempkey (202) 482–3534 or (202) 482–1698, respectively; AD/CVD Operations Office I, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that bottle-grade polyethylene terephthalate resin (''PET resin'') from Thailand is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The preliminary margin assigned to Thai Shinkong Industry Corporation Ltd. (''Thai Shinkong'') is based on adverse facts available (''AFA''). The estimated margins of sales at less than fair value

are shown in the *Suspension of Liquidation* section of this notice

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

Petitioner

The petitioner in this investigation is the United States PET Resin Producers Coalition (''the petitioner'').

Case History

On April 20, 2004, the Department of Commerce (''the Department'') published the initiation of the antidumping duty investigations of imports of PET resin from India, Indonesia, Taiwan, and Thailand. *See Notice of Initiation of Antidumping Duty Investigations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand,* 69 FR 21082 (April 20, 2004) (''*Initiation Notice*''). Since the initiation of the investigation, the following events have occurred.

On May 17, 2004, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. *See United States International Trade Commission Report on Polyethylene Terephthalate Resin from India, Indonesia, Taiwan, and Thailand, Nos. 701–TA–439–440 and 731–TA–1077–1080* (May 17, 2004).

On May 10, 2004, the Department solicited comments from interested parties in all of the concurrent PET Resin antidumping investigations, providing an opportunity to comment on the criteria to be used for model matching. Between May 17 and June 3, 2004, the Department received comments and/or rebuttal comments on model matching from the petitioner, Far Eastern Textiles, Reliance Industries Ltd., South Asian Petrochem Ltd. and P.T. Indorama Synthetics. the Department took these comments into consideration by the Department in developing the model matching characteristics and hierarchy for all of the PET Resin antidumping investigations. *See* June 9, 2004, memorandum to Susan Kuhbach, Senior Office Director, ''Selection of Model Matching Criteria for Purposes of the Antidumping Questionnaire'' (''*Model Match Memorandum*'').

On May 20, 2004, the Department selected the two largest producers/exporters of PET resin from Thailand, Bangkok Polyester Public Company Ltd. (''Bangkok Polyester'') and Thai Shinkong, as mandatory respondents in this investigation.[1]

On June 9, 2004, the antidumping questionnaire [2] was issued to Thai Shinkong and Bangkok Polyester. During the period July through October 2004, the Department received responses to sections A, B and C of the Department's original and supplemental questionnaires from Bangkok Polyester and Thai Shinkong. *See* the *Use of Facts Otherwise Available* section of this notice regarding the Department's rejection of Thai Shinkong's responses. On May 18, 2004, Indo Pet (Thailand) Ltd. (''Indo Pet'') formally requested to be treated as a voluntary respondent in this investigation in response to the Department's invitation to do so in the *Respondent Selection Memorandum*. On July 26, 2004, Indo Pet withdrew its request for individual examination as a voluntary respondent.

On July 30, 2004, pursuant to 19 CFR 351.205(e), the petitioner made a timely request to postpone the preliminary determination. We granted this request and postponed the preliminary determination until no later than October 20, 2004. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand,* 69 FR 48842 (August 11, 2004).

On August 10, 2004, the petitioner made an allegation that sales by Bangkok Polyester in Thailand were below the cost of production (''COP''). On August 26, 2004, pursuant to section 7773(b) of the Act, the Department initiated a cost investigation for Bangkok Polyester's Thailand sales of PET Resin.[3] On August 26, 2004, the Department issued a section D questionnaire to Bangkok Polyester. Responses to the questionnaire and supplemental questionnaires were received in September and October 2004.

On October 6, 2004, pursuant to 19 CFR 351.210(b)(2)(i), the petitioner requested that the Department postpone the final determination in the investigation of PET Resin from Thailand in the event of a negative preliminary determination.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. In accordance with 19 CFR 351.210(e)(2), the Department requires that exporters requesting postponement of the final determination also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months.

On September 29, 2004, we received a request to postpone the final determination from Bangkok Polyester. In its request, Bangkok Polyester consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, and the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Period of Investigation

The period of investigation (''POI'') is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition in March 2004 in accordance with 19 CFR 351.204(b)(1).

[1] *See* Memorandum to Susan Kuhbach, dated May 20, 2004, entitled ''Antidumping Duty Investigation of Bottle-Grade Polyethylene Teraphthalate (''PET) Resin from Thailand, Selection of Respondents'' (''*Respondent Selection Memorandum*''

[2] Section A of the questionnaire requests general information concerning the company corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

[3] *See* Memorandum to Susan Kuhbach, dated August 26, 2004, entitled ''Antidumping Duty Investigation of Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand: United States PET Resin Producers Coalition's Allegation of Sales Below the Cost of Production for Bangkok Polyester Public Company Limited.''

Scope of Investigation

The merchandise covered by this investigation is bottle-grade polyethylene terephthalate (PET) resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (''HTSUS''); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to this investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* We did not receive any scope comments from interested parties within the comment period.

Use of Facts Otherwise Available

Sections 776(a)(2)(A), (B), (C), and (D) of the Act provide that the Department shall use facts available when a party withholds information that has been requested by the administering authority under this subtitle; does not provide the Department with information by the established deadline or in the form and manner requested by the Department; significantly impedes a proceeding; or provides such information but the information cannot be verified. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available in selecting from among the facts available. Such adverse inference may include reliance on information derived from: (1) The petition; (2) A final determination in the investigation under this title; (3) Any previous review under section 751 or determination under 753; or (4) Any other information placed on the record. *See* 19 CFR 351.308(c).

On June 9, 2004, the Department sent an antidumping questionnaire to Thai Shinkong. Although Thai Shinkong did, as discussed below, submit several questionnaire responses in July and August 2004, on August 31, 2004, the Department informed Thai Shinkong that it was rejecting Thai Shinkong's latest attempt to submit a response to the Department's questionnaire because Thai Shinkong's submission was not in compliance with the filing requirements of the statute and regulations. *See* letter to Thai Shinkong from John Brinkmann dated August 31, 2004. On the basis of our findings in this investigation, which are detailed below, we have determined that the use of facts otherwise available is appropriate for Thai Shinkong because it has not provided certain information in the form and manner requested.

The Department received Thai Shinkong's first section A response on July 1, 2004. This submission was rejected by the Department because: (1) It was not filed by the Department's deadline of June 30, 2004; (2) The submission was not properly bracketed and marked as either a public or proprietary version; and (3) Thai Shinkong did not include with its submission the correct number of copies of the public and proprietary versions of the submission and the required certificates of service and accuracy. The Department extended the deadline for submitting the section A response until July 16, 2004.

Thai Shinkong resubmitted its section A response on July 16, 2004. This submission was also rejected by the Department because: (1) It was filed under the incorrect case number; (2) It did not contain the correct number of proprietary versions; (3) It did not contain the required public version of section A; (4) Bracketing of business proprietary information was incorrectly identified both on the top of the page and in the text of the actual document; and (5) The Certificate of Service did not list the names of the parties on whom the response was served. The Department further extended the deadline for the section A response to July 26, 2004, to coincide with the due date for Thai Shinkong's responses to sections B and C of the questionnaire.

The Department did not receive an official submission of sections A–C from Thai Shinkong until July 30, 2004, four days after the July 26 deadline. While the Department did receive e-mails on July 24 and 26, 2004, from Thai Shinkong with attached copies of the section A–C submissions, e-mailing is not an acceptable format for filing submissions. The sections A–C responses received by the Department on July 30, 2004, had further problems with correct filing and formatting procedures. While the Department notes that some earlier problems had been corrected, such as filing the correct number of proprietary versions for section A and fixing previously noted bracketing errors, we noted that there were still several consistent errors with the filing of sections A–C: (1) There was no cover page to each section (A, B or C) identifying the case number and whether the attached section was public or proprietary; (2) The Certificates of Service and Accuracy were not provided; (3) Only one copy each of both the public version and proprietary version of Thai Shinkong's responses were submitted to the Department for sections B and C; (4) Page C–32 of what appears to be the public version of section C contained bracketed proprietary information; and (5) The required electronic databases for sections B and C sales were not submitted.

On August 4, 2004, the Department advised Thai Shinkong that it was rejecting Thai Shinkong's July 30, 2004, sections A–C submission as improperly filed, and that it would not be able to consider a revised response in the preliminary determination, then scheduled for August 31, 2004. The Department also informed Thai Shinkong that it would not be able to consider a revised response in the final determination unless received by August 16, 2004. The Department's August 4 letter did note that if the preliminary determination were to be postponed, it may be possible for the Department to consider Thai Shinkong's factual information in that postponed preliminary determination, if any factual information was properly filed with the Department no later than August 16, 2004.

On August 13, 2004, the Department received a timely submission of the sections A–C response from Thai Shinkong. Since the Department had extended the preliminary determination on August 11, 2004, to October 20, 2004,

the Department reviewed Thai Shinkong's August 13, 2004, submission for consideration in the extended preliminary determination. While this submission appeared to have corrected some of the filing and bracketing problems previously identified by the Department, several filing problems still remained. Most significantly, while Thai Shinkong did certify that the public version of sections A–C was served to those parties on the administrative protective order service list, it failed to certify that the proprietary version had been served to the parties on that list. The Department was also unable to ascertain by what means these parties had been served, i.e., first class mail or express mail.

On August 16, 2004, the Department sent an e-mail to Thai Shinkong inquiring whether the parties on the APO service list had been served with the August 13 submission and how these documents were sent.[4] The Department received an e-mail response [5] from Thai Shinkong on August 23, 2004, in which Thai Shinkong stated that it only sent the public version of the response to interested parties because its proprietary version contained confidential information. It stated that for that reason, Thai Shinkong only provided the public version of its August 13, 2004, submission to the parties. Thai Shinkong also asserted that it sent the public version of that submission to the petitioner. However, we note that as of August 26, 2004, the petitioner stated it had not received any service of Thai Shinkong's sections A–C response. On August 31, 2004, the Department advised Thai Shinkong that it was rejecting Thai Shinkong's August 13, 2004, submission because of its failure to serve parties on the administrative protective order service list with a proprietary version of the response. The Department also advised Thai Shinkong that it was unable to further extend the deadline for filing the questionnaire responses due to the statutorily mandated deadlines that govern the investigation.

The Department is applying facts available to calculate a dumping margin for Thai Shinkong because Thai Shinkong failed to serve the Proprietary Version of its most recent submission on parties to this proceeding that were authorized to receive this information under an administrative protective order. By failing to provide this information to the interested parties, Thai Shinkong has not provided the requested information in the form and manner requested by the Department's August 16 due date for filing factual information. As a consequence, the petitioner would not have had adequate time to conduct its own analysis and submit comments on Thai Shinkong's factual submission. Moreover, the Department was unable to further extend the filing deadline because there was no longer sufficient time to evaluate interested party comments on Thai Shinkong's response, follow-up with supplemental questions, and conduct a margin analysis by the October 20, 2004, preliminary determination. Therefore, we determine that the Department's calculation of an antidumping margin for Thai Shinkong should be based on facts otherwise available, in accordance with section 776(a)(2) of the Act.

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) (''SAA''). Furthermore, ''{a}ffirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Countervailing Duties: Final Rule,* 62 FR 27296, 27340 (May 19, 1997).

We find that the application of adverse facts available is appropriate because Thai Shinkong has failed to comply with the Department's requests for information and has not acted to the best of its ability. After each of the submissions by Thai Shinkong, the Department sent a detailed letter to Thai Shinkong, which not only specified the deficiencies in the filing, but also provided examples and citations to appropriate sources for rectifying the deficiencies. Filing deadlines were also extended to the maximum extent practicable. However, as described in detail above, each subsequent filing by Thai Shinkong contained significant deficiencies that caused the Department to reject each submission. Therefore, we find that, despite being provided ample opportunities to do so, by not remedying the deficiencies in its responses, Thai Shinkong failed to act to the best of its ability to provide the information requested by the Department.

Where the Department applies adverse facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c); SAA at 829–831. Because there are no prior administrative reviews and no other information has been placed on the record, as adverse facts available, we are assigning Thai Shinkong the higher of: (1) The highest margin listed in the notice of initiation; or (2) The margin calculated for any respondent in this investigation.

For adverse facts available, we have selected the margin from the petition, since the margin derived from information in the petition exceed the margin calculated for the mandatory respondent. When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d); *see also* SAA at 870. As discussed in the October 20, 2004, memorandum from Susan Kuhbach, Senior Office Director to Jeffrey May, Deputy Assistant Secretary, ''Preliminary Determination of Polyethylene Terephthalate (''PET'') Resin from Thailand: Corroboration Memorandum'' (''*Corroboration Memorandum*'') regarding the corroboration of facts available, we find that the margin of 41.28 percent has probative value. Accordingly, we find that the highest margin, based on petition information and adjusted as

[4] *See* Memo to File dated August 23, 2004, entitled ''Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: E-mail Regarding Sections A–C Submissions.''

[5] *See* Id.

described in the *Corroboration Memorandum,* of 41.28 percent is corroborated within the meaning of section 776(c) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Thailand during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on four criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: Intrinsic viscosity, blend, copolymer/homopolymer, and additives. *See Model Match Memorandum.* Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of PET resin from Thailand were made in the United States at less than fair value (''LTFV''), we compared the export price (''EP'') to the normal value (''NV''), as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(I) of the Act, we calculated weighted-average EPs. We compared these to weighted-average home market prices in Thailand. For Bangkok Polyester, we compared all U.S. and home market sales made during the POI, based on the date of issuance of Bangkok Polyester's invoices. We determined this to be the appropriate date of sale because, based on the description of the sales process provided by Bangkok Polyester, the quantity, sales price, and product specifications were frequently renegotiated after the purchase order.

Export Price

For Bangkok Polyester's price to the United States, we used EP. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 722(c) of the Act. We calculated Bangkok Polyester's EP based on the packed prices charged to the first unaffiliated customer in the United States. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

In accordance with section 772(c)(2) of the Act, we made deductions from the starting price for movement expenses where appropriate. These included inland freight and brokerage and handling fees. In accordance with section 772(c)(1)(B) of the Act, we have preliminarily added to the starting price the amount of import duties imposed by the Government of Thailand that were rebated upon export of the subject merchandise to the United States. We will verify the terms and conditions of this duty drawback claim for the final determination.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that Bangkok Polyester had a viable home market for PET resin. As such, Bangkok Polyester submitted home market sales data for purposes calculating NV.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section, below.

B. Cost of Production Analysis

Based on allegations contained in the petitioner's August 10, 2004, sales-below-cost allegation with respect to Bangkok Polyester (*See* August 10, 2004, letter from the petitioner, ''Bangkok Polyester Public Company Limited Sales Below Cost Allegation''), and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that PET resin sales were made in Thailand at prices below the cost of production (''COP''). *See* August 26, 2004, memorandum to Susan Kubach, Senior Office Director, ''Petitioner's Allegation of Sales Below the Cost of Production for Bangkok Polyester Public Company Limited.'' As a result, the Department has conducted an investigation to determine whether Bangkok Polyester made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general administrative (''G&A'') expenses, including interest expenses, and packing expenses. We relied on the COP data submitted by Bangkok Polyester in its cost questionnaire response, with the following adjustments: (1) We revised the financial expense ratio to include the net exchange gains; (2) For both the G&A and financial expense ratios, we subtracted Bangkok Polyester's packing expenses from the cost of goods sold denominator. *See* ''Bangkok Polyester Cost Calculation Memorandum,'' from Gina Lee to Neal Halper, dated October 20, 2004.

2. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP for Bangkok Polyester to its home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, and direct and indirect selling expenses (which were also deducted from COP).

3. Results of the COP Test

Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded these home-market sales for Bangkok Polyester.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[6] including selling functions,[7] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices,)[8] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make a LOT adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In conducting our LOT analysis for Bangkok Polyester, we examined the specific types of customers, the channels of distribution, and the company selling practices. Generally, if the reported LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different for different categories of sales, the functions and activities may be dissimilar.

We found the following:

Bangkok Polyester reported that it sells PET resin to trading companies and converters (end users) in the home market, and to distributors in the United States. Bangkok Polyester claims that the selling function it performs are limited and do not materially differ among channels of trade or between the U.S. and home market. We examined the information reported by Bangkok Polyester and found that home market sales in both channels of distribution were similar with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that Bangkok Polyester had only one LOT for its home market sales.

Bangkok Polyester made only EP sales to the United States during the POI. All of Bangkok Polyester's EP sales were made through the same channel of distribution (i.e., sales from the manufacturer to distributors). The EP selling activities do not differ significantly from the home market selling activities. Therefore, we find that the U.S. LOT is similar to the home market LOT and a LOT adjustment is not appropriate. *See* section 773(a)(7)(A) of the Act.

D. Calculation of Normal Value Based on Home Market Prices

We determined NV for Bangkok Polyester as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. We also adjusted home market prices, where appropriate, by adding or subtracting billing adjustments to home market prices. In addition, where applicable in comparison to EP transactions, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments for Bangkok Polyester's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expense) and adding U.S. direct selling expenses (i.e., credit expenses).

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sale, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination for Bangkok Polyester.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U. S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of PET resin from Thailand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Producer/exporter	Weighted-average margin (percentage)
Bangkok Polyester Public Company, Ltd	26.03
Thai Shinkong Industry Corporation, Ltd	41.28
All Others	26.03

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties in this proceeding in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination

[6] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[7] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[8] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of PET resin from Thailand are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs by the later of 50 days after the date of publication of this notice or one week after the issuance of the verification reports. *See* 19 CFR 351.309(c)(1)(I). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) The number of participants; and (3) A list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c).

The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 20, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–24094 Filed 10–27–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–841)

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin from India

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

EFFECTIVE DATE: October 28, 2004

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Saliha Loucif at (202) 482–1376 or (202) 484–1779, respectively; AD/CVD Enforcement, Office 1, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that bottle–grade polyethylene terephthalate (PET) resin from India is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The preliminary margin assigned to Reliance Industries Limited (Reliance) is based on adverse facts available. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

Petitioner

The petitioner in this investigation is the United States PET Resin Producers Coalition (the petitioner).

Case History

This investigation was initiated on April 20, 2004. *See Notice of Initiation of Antidumping Duty Investigations: Bottle–Grade Polyethylene Terephthalate Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 21082 (April 20, 2004) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

The Department of Commerce (the Department) set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, 69 FR 21083. No comments were received from respondents or the petitioner.

The Department issued a letter on May 10, 2004, to interested parties in all of the concurrent PET resin antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and its hierarchy of characteristics. On May 17, 2004, the Department received comments on model matching from the petitioner, Reliance, South Asia Petrochem Ltd. (SAPL), Far Eastern Textiles and P.T. Indorama Synthetics. The Department took these comments were taken into consideration in developing the model matching characteristics and hierarchy for all of the PET resin antidumping investigations. *See Memorandum to Susan Kuhbach, Senior Director, Re: Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire* (June 9, 2004).

On May 17, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. *See United States International Trade Commission Report on Polyethylene Terephthalate Resin from India, Indonesia, Taiwan, and Thailand, Nos. 701–TA–439–440 and 731–TA–1077–1080* (May 17, 2004).

On June 9, 2004, the Department issued its antidumping duty questionnaire (the questionnaire) to SAPL and Reliance, specifying that the responses to Section A and Sections B and C would be due on June 30 and July 16, 2004, respectively.[1] We received

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

responses to Sections A–C of the questionnaire and issued supplementary questionnaires where appropriate.[2] On July 29, 2004, the petitioner requested that the Department revise the estimated antidumping duty margin used for purposes of initiation in this proceeding from 35.51 to 52.54 percent. On July 30, 2004, pursuant to 19 CFR 351.205(e), the petitioner made a timely request to postpone the preliminary determination. We granted this request and postponed the preliminary determination until no later than October 20, 2004. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Bottle–Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 48842 (August 11, 2004).

On August 11, 2004, the petitioner alleged that sales made by SAPL in India were below the cost of production (COP). On September 1, 2004, pursuant to section 773(b) of the Act, the Department initiated a cost investigation for SAPL's Indian sales of PET Resin. *See Memorandum to Susan Kuhbach, Senior Office Director, Re: Investigation of Polyethylene Terephthalate Resin from India: Petitioner's Allegation of Sales Below the Cost of Production for South Asia Petrochem Ltd* (September 1, 2004). On August 19, 2004, the petitioner alleged that sales made by Reliance in India were below the COP. On September 3, 2004, pursuant to section 773(b) of the Act, the Department initiated a cost investigation for Reliance's Indian sales of PET Resin. *See Memorandum to Susan Kuhbach, Senior Office Director, Re: Investigation of Polyethylene Terephthalate Resin from India: Petitioner's Allegation of Sales Below the Cost of Production for Reliance Industries Ltd* (September 3, 2004). On September 24, 2004, Reliance withdrew from this proceeding and did not submit a response to Section D of the questionnaire.

Postponement of Final Determination and Extension of Provisional Measures.

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if,

in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. In accordance with 19 CFR 351.210(e)(2), the Department requires that exporters requesting postponement of the final determination also request an extension of the provisional measures referred to in section 733(d) of the Act from a four–month period until not more than six months.

On October 8, 2004, we received a request to postpone the final determination from SAPL. In its request, SAPL consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producer/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: 1) a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or 2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

In its petition, the petitioner identified five producers of PET resin in India. *See Petition from the petitioner for the Imposition of Antidumping and Countervailing Duties on Imports of PET resin from India* (March 24, 2004) (the petition). Additionally, on May 28, 2004, the Embassy of India in Washington, D.C., provided the Department with a list of eight Indian producers and four Indian exporters of the subject merchandise to the United States. Based on the imported quantities reported by U.S. Customs and Border Protection (CBP), we are satisfied that the record supports the conclusion that SAPL and Reliance are the largest Indian producers that exported the subject merchandise to the United States during the period of investigation (POI). *See Memorandum from Shane Subler, Trade Analyst to the File, Re: Customs and Border Protection Statistics Considered for Purpose of Respondent Selection* (May 25, 2004); *See*, also, *Memorandum from Constance Handley, Program Manager to Susan Kuhbach, Senior Office Director, Re: Selection of Respondents* (May 12, 2004).

Period of Investigation

The POI is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition in March, 2004, and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is bottle–grade polyethylene terephthalate (PET) resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle–grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post–consumer recycle (PCR) or post–industrial recycle (PIR) PET resin; however, included in the scope is any bottle–grade PET resin blend of virgin PET bottle–grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigations. Fiber–grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice. *See Initiation Notice; See, also, Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). We did not receive any scope comments from interested parties within the comment period.

[2] *See Facts Available* section of this notice.

Use of Facts Otherwise Available

Sections 776(a)(2)(A), (B), (C), and (D) of the Act provide that the Department shall use facts available when a party withholds information that has been requested by the administering authority under this subtitle; does not provide the Department with information by the established deadline or in the form and manner requested by the Department; significantly impedes a proceeding; or provides such information but the information cannot be verified. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available in selecting from among the facts available. Such adverse inferences may include reliance on information derived from: (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under 753; or (4) any other information placed on the record. *See* 19 CFR 351.308(c). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) (SAA).* Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' See Antidumping Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997).

Reliance withdrew from this proceeding on September 24, 2004. *See Letter from Reliance to the Department, Re: Reliance Industries Limited's Notice of Withdrawal from the Investigation and Request for Destruction of Business Proprietary Information* (September 22, 2004) and requested the destruction of its business proprietary information. Consequently, Reliance failed to submit a response to the Section D questionnaire. We find that the application of adverse facts available is appropriate because Reliance withdrew from this investigation and failed to cooperate to the best of its ability.

Where the Department applies adverse facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* 19 CFR 351.308(c); *SAA* at 829–831.

Here, the Department is relying on information provided in the petition and revised customs value data submitted by the petitioner on July 29, 2004, for purposes of applying adverse facts available. At the time of the initiation, the Department reviewed all the data used by the petitioner to calculate the estimated dumping margin. We found that the margin in the petition was appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. *See Initiation Notice*.

However, on July 29, 2004, the petitioner submitted revised statistics and requested that the Department amend the estimated antidumping duty margin for India in this proceeding from 35.51 to 52.54 percent. *See Letter from the petitioner to the Department, Re: Request to Revise and Correct the Estimated Dumping Margin for India by Amendment* (July 29, 2004) (*July 29, 2004, submission*). In that submission, the petitioner demonstrated that the 2003 USITC Dataweb[3] information, which was used to calculate the average unit values (AUVs) contained in the petition, contained erroneous customs value for imports of the subject merchandise into the United States from India. In a letter dated June 16, 2004, which the petitioner appended to its July 29, 2004, submission, the Foreign Trade Division Economics and Statistics Administration of the Department's U.S. Census provided corrected statistics for the month of October 2003. The revised statistics show that the CBP value for Indian PET resin under the HTSUS 3907.60.0010 for the month of October 2003 was overstated by $3,600,000.

The petitioner revised the AUV worksheet from the petition to incorporate the revised statistics, demonstrating that a correction of the customs value data reduces the average U.S. customs value for 2003 from $0.41 to $0.3646 per pound. This revision raises the estimated dumping margin from 35.51 to 52.54 percent. Based on our review of the revised statistics, we preliminary determine that it is more appropriate to use the updated statistics in determining the adverse facts available rate. *See Corroboration Memorandum*.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition), the Department must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The *SAA* clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d); *See*, also, *SAA* at 870. As discussed in the *Memorandum from Susan Kuhbach, Senior Office Director to Jeffrey May, Deputy Assistant Secretary, Re: Corroboration of Data Contained in the Petition for Assigning Facts Available Rate* (October 20, 2004) (*Corroboration Memorandum*), we found that the margin of 52.54 percent has probative value. Accordingly, we find that the highest margin, based on the petition information and adjusted as described in the *Corroboration Memorandum*, of 52.24 percent is corroborated within the meaning of section 776(c) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the *Scope of Investigation* section, above, and sold in India during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on four criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product: intrinsic viscosity, blend, copolymer/homopolymer, and additives. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Date of Sale

In its questionnaire responses, SAPL reported home market and U.S. sales using invoice date as the date of sale. SAPL reported that the date of invoice is the date of the sale as that is the point in time when all material terms are final. Based on the description of the sales process provided by SAPL, we have used invoice date as the date of sale for all sales. *See* 19 CFR 351.401(i).

[3] Customs Values, USITC available at http://www.theDataweb.org.

Fair Value Comparisons

To determine whether sales of PET resin from India were made in the United States at LTFV, we compared the export price (EP) to the normal value (NV), as described in the *Export Price and Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(I) of the Act, we calculated weighted–average EPs. We compared these to weighted–average home market prices in India.

Export Price

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 722(c) of the Act. We found that SAPL made EP sales during the POI. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation, and use of constructed export price is not otherwise indicated. We calculated SAPL's EP, based on the packed prices charged to the first unaffiliated customer in the United States. *See SAPL response to section B of the questionnaire* (July 30, 2004).

In accordance with section 772(c)(2) of the Act, we made deductions from the starting price for movement expenses where appropriate. These included inland freight, insurance expenses, international freight, and brokerage and handling fees.

Normal Value

A. Selection of Comparison Markets

Section 772(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP, and that there is no particular market situation that prevents a proper comparison with EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that SAPL had a viable home market for PET resin. As such, SAPL submitted home market sales data for purposes of calculating NV. In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section, below.

B. Cost of Production Analysis

Based on allegations contained in the petitioner's sales–below-cost allegation on behalf of SAPL, and in accordance with section 773(b)(2)(A)(I) of the Act, we found reasonable grounds to believe or suspect that PET resin sales by SAPL were made in India at prices below the cost of production (COP). *See Letter from the petitioner, Re: South Asia Petrochem Limited Sales Below Cost Allegation* (August 11, 2004); *See, also, Memorandum from Daniel O'Brien, Trade Analyst to Susan Kubach, Senior Office Director, Re: Petitioner's Allegation of Sales Below the Cost of Production for SAPL* (September 1, 2004). As a result, the Department has conducted an investigation to determine whether SAPL made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general administrative (G&A) expenses, including interest expenses, and packing expenses. We relied on the COP data submitted by SAPL in its cost questionnaire response. *See SAPL response to section D of the questionnaire* (September 28, 2004).

2. Test of Home Market Sales Prices

We compared the weighted–average COP for SAPL to its home–market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model–specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses (which were also deducted from COP).

3. Results of the COP Test

Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded home–market sales for SAPL.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).

See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. Id.; See, also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[4] including selling functions,[5] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[6]) we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United*

[4] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[5] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary determination, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[6] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

States, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make an LOT trade adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In conducting our LOT analysis for SAPL, we examined the specific types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different for different categories of sales, the functions and activities may be dissimilar.

Here, SAPL reported that it sells to distributors and end users in the home market, and to trading companies in the United States. SAPL reported a single LOT in the home market and has not requested an LOT adjustment. We examined the information reported by SAPL and found that home market sales to both customer categories were similar with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that SAPL had only one LOT for its home market sales.

SAPL made only EP sales to the United States during the POI. All of SAPL's EP sales were made through the same channel of distribution (*i.e.*, sales from the manufacturer to trading companies). The EP selling activities do not differ significantly from the home market selling activities. Therefore, we find that the U.S. LOT is similar to the home market LOT and an LOT adjustment is not necessary. *See* section 773(a)(7)(A) of the Act.

D. Calculation of Normal Value Based on Home Market Prices

In determining NV for SAPL, we made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, where applicable in comparison to EP transactions, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act.

We made COS adjustments for SAPL's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, and commissions) and adding U.S. direct selling expenses (credit expenses, interest expenses, bank fees, and commissions).

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sale, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(I) of the Act, we intend to verify all information relied upon in making our final determination for SAPL.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of PET resin from India, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We are also instructing the CBP to require a cash deposit or the posting of a bond. Consistent with the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 From India, 69 FR 35293 (June 24, 2004), we are instructing the CBP to require a cash deposit or posting of a bond equal to the amount by which the normal value exceeds the EP, as indicated below, less the amount of the countervailing duty determined to constitute an export subsidy in the companion countervailing duty investigation, (*i.e.*, 19.11 percent for SAPL and 29.00 percent for Reliance). Because the ''All Others'' rate is based on SAPL's rate, we have reduced it by the amount of SAPL's export subsidies. After this adjustment, the resulting deposit rates will be 2.12 percent for SAPL, 23.24 percent for Reliance, and 2.12 percent for ''All Others.'' These instructions suspending liquidation will remain in effect until further notice.

The weighted–average dumping margins are provided below:

Producer/Exporter	Weighted–Average Margin (Percentage)
SAPL	21.23
Reliance	52.54
All Others	21.23

Disclosure

The Department will disclose its calculations in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of PET resin from India are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs on the later of 50 days after the date of publication of this notice or one week after the issuance of the verification reports. *See* 19 CFR 351.309(c)(1)(I). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address, and telephone number; 2) the number of participants; and 3) a list of

the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(I)(1) of the Act.

Dated: October 20, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–24096 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–817]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia

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

SUMMARY: We preliminarily determine that bottle-grade polyethylene terephthalate (''PET'') resin from Indonesia is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. If this investigation proceeds normally, we will make our final determination within 75 days of this preliminary determination.

EFFECTIVE DATE: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1174 or (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 21082 (April 20, 2004) (''*Initiation Notice*'')), the following events have occurred:

On May 10, 2004, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. We received comments on our proposed matching criteria from the United States PET Resin Producers Coalition (''the petitioner'') and P.T. Indorama Synthetics Tbk (''Indorama'') on May 17, and May 20, 2004, respectively.

On May 24, 2004, we asked the petitioner for clarification of its model-matching comments and its response was provided to the Department of Commerce (''the Department'') on May 26, 2004. On June 9, 2004, the Department adopted the model match criteria and hierarchy for this proceeding. *See* Memorandum to Susan Kuhbach, ''Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire,'' dated June 9, 2004, which is on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building. On May 19, 2004, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of PET resin from Indonesia are materially injuring the United States PET resin industry (*see* ITC Investigation Nos. 701–TA–439–440 and 731–TA–1077–1080 (Preliminary) 69 FR 28948 (May 19, 2004)).

On June 4, 2004, we selected the three largest producers/exporters of PET resin from Indonesia (Indorama, P.T. Polypet Karyapersada (''Polypet''), and P.T. SK Keris (''SK Keris'')) as the mandatory respondents in this proceeding. For further discussion, *see* Memorandum to Susan Kuhbach, ''Issuance of Questionnaire to Respondents,'' dated June 4, 2004 (''*Respondent Selection Memorandum''*), which is on file in the Department's CRU. We subsequently issued the antidumping questionnaire to Indorama, Polypet, and SK Keris on June 9, 2004.[1]

On June 25, 2004, the Department received a response from Polypet to section A of the Department's original questionnaire. On July 14, 2004, the Department rejected Polypet's section A response because it was improperly filed. *See* letter from Judith Wey Rudman to Polypet, dated July 14, 2004. Specifically, its submission lacked certain markings and specifications required by the Department to ensure proper filing. Furthermore, the submission was neither properly bracketed nor marked as either a public or proprietary version. The Department also noted that Polypet did not include the correct number of copies of the public and proprietary versions of the submission, and that the required certificates of service and accuracy were not correctly filed with its submission. Additionally, the submission was not served on the other interested parties in this proceeding.

The Department received the revised section A and original sections B and C of the response on July 21, 2004, but again rejected the submission due to deficiencies in the treatment of business proprietary information. *See* letter from Judith Wey Rudman to Polypet, dated July 29, 2004. First, we noted that the responses continued to be improperly bracketed under 19 CFR 351.304(b)(1) of the Department's regulations. Second, a ''clear and compelling'' explanation for Polypet's request to exempt certain information from disclosure under an administrative protective order (''APO'') was not provided in its cover letter, as required by 19 CFR 351.304(b)(2)(i). Third, the responses did not contain a summary of bracketed information in the public version of Polypet's response, as required by 19 CFR 351.304(c)(1). Finally, Polypet did not provide the Department with a copy of the business proprietary version served on parties with APO access.

The Department received the revised sections A–C response from Polypet on August 5, 2004. On August 11, 2004, we called Polypet to explain that the August 5, 2004, submission failed to incorporate the instructions set forth in the Department's July 29, 2004, letter. *See* Memo to the File, ''Telephone Conversation with Polypet,'' dated August 11, 2004. On August 12, 2004, the Department rejected as improperly filed Polypet's August 5, 2004, sections A–C submission. *See* letter from Julie H. Santoboni to Polypet, dated August 12,

[1] Section A of the questionnaire requests general information concerning the company corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

2004. In that letter, the Department also notified Polypet that it had until August 23, 2004, to file a proper submission, including an explanation for its request for proprietary treatment, appropriate bracketing of business proprietary information, and service of the proprietary and correctly summarized public versions of its submission on parties included on the APO service list. The Department advised Polypet that failure to file a response in accordance with the Department's regulations might lead to the use of adverse facts available under section 776 of the Tariff Act of 1930 (''the Act'') and section 351.308 of the Department's regulations for the preliminary determination, as well as the final determination.

The Department received Polypet's revised sections A–C response on August 24, 2004. On August 31, 2004, we spoke with Polypet's chief executive officer and explained that the Department was rejecting Polypet's latest submission. *See* Memo to the File, ''Telephone Conversation with Polypet,'' dated August 31, 2004. On August 31, 2004, we again rejected Polypet's response citing the company's failure to bracket certain business proprietary information in accordance with the Department's regulations. Specifically, Polypet did not agree to release certain sales information under an APO to interested parties in this proceeding. Moreover, Polypet again did not provide a clear and compelling explanation of the need to withhold such information from disclosure under an APO. We informed Polypet that the Department was unable to further extend the deadline for filing the questionnaire responses because, due to statutorily mandated deadlines that govern the investigation, there was no longer sufficient time to evaluate a properly filed response, follow up with supplemental questions, and conduct a margin analysis by the October 20, 2004, preliminary determination. Moreover, the petitioner would not have adequate time to conduct its own analysis and submit comments on Polypet's factual submission. *See* letter from Susan Kuhbach to P.T. Polypet Karyapersada, dated August 31, 2004. On September 15, 2004, at the request of Polypet, a meeting was held with Department officials and a representative of Polypet to discuss the rejection by the Department of Polypet's questionnaire response. *See* Memorandum to the File, dated September 15, 2004.

In July 2004, the Department received responses to sections A, B, and C of the Department's original questionnaire from Indorama. The Department did not receive a response to the questionnaire from SK.

On July 30, 2004, pursuant to 19 CFR 351.205(e), the petitioner made a timely request to postpone the preliminary determination. We granted this request and postponed the preliminary determination until no later than October 20, 2004. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 48842 (August 11, 2004).

On August 10, 2004, the petitioner made an allegation of sales below the cost of production (''COP'') against sales of PET resin from Indonesia with respect to Indorama. On August 25, 2004, pursuant to section 773(b) of the Act, the Department initiated a cost investigation of Indorama's Indonesian sales of PET resin. *See* Memorandum to Susan Kuhbach, ''United States PET Resin Producers Coalition's Allegation of Sales Below the Cost of Production for P.T. Indorama Synthetics Tbk,'' dated August 25, 2004, which is on file in the CRU. Also, on August 25, 2004, the Department informed Indorama that it was required to respond to section D of the Department's questionnaire. The Department received Indorama's response to section D of the Department's questionnaire on September 13, 2004.

The Department issued supplemental questionnaires for sections A, B, and C in August and September 2004, and received responses from Indorama in August, September, and October 2004. A supplemental section D questionnaire was issued on September 21, 2004, and Indorama's response was received on October 5, 2004.

On October 12, 2004, the petitioner submitted comments with respect to the upcoming preliminary determination.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination under section 733(b), a request can be made by the petitioner. On October 6, 2004, the petitioner requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** in the event of a negative determination or *de minimis* margins. In accordance with 735(a)(2) of the Act and 19 CFR 351.210(b)(2)(i) and (ii) of the Department's regulations, (1) because our preliminary determination is affirmative, and (2) the Department has not received a request for postponement from exporters or producers who account for a significant proportion of exports of the subject merchandise, we are not granting the petitioner's request to postpone the final determination.

Scope of Investigation

The merchandise covered by this investigation is bottle-grade polyethylene terephthalate (''PET'') resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (''PCR'') or post-industrial recycle (''PIR'') PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (''RPET''). Waste and scrap PET are outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigations.

The merchandise subject to these investigations is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (''HTSUS''); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.*

We received no comments from the interested parties.

Period of Investigation

The period of investigation (''POI'') is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to

the filing of the petition on March 24, 2004.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the Department's request, the Department shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act further states that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts otherwise available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) (''SAA''). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27355 (May 19, 1997) and *Nippon Steel* v. *U.S.,* 337 F.3d 1373 (Fed. Cir. 2003).

Where the Department applies adverse facts available (''AFA'') because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* also 19 CFR 351.308(c); SAA at 829–831.

As explained in the ''Background'' section of this notice, SK Keris did not respond to our June 9, 2004, antidumping questionnaire. Pursuant to 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for SK Keris because it is a mandatory respondent and did not respond to our June 9, 2004, antidumping questionnaire. Moreover, because SK Keris failed to respond, in whole, or in part, to our request for information and thus did not put forth its maximum effort as required by the questionnaire, we have found that it failed to cooperate to best to its ability. Therefore, pursuant to 776(b) of the Act, we have used an adverse inference in selecting from the facts available the margin for this company. *See* Memorandum from Susan Kuhbach to Jeffery May, ''Preliminary Determination of Polyethylene Terephthalate (''PET'') Resin from Indonesia: Corroboration Memorandum,'' dated October 20, 2004 (''*Corroboration Memorandum*'').

Regarding Polypet, the Department rejected its questionnaire responses because Polypet failed to meet the filing requirements of the statute and the Department's regulations. Specifically, the company failed to serve parties on the APO service list with a proper business proprietary version of the questionnaire response. Additionally, Polypet repeatedly filed questionnaire responses with double brackets, without providing a clear and compelling reason why the information could not be released under an APO. Despite our repeated attempts to allow Polypet to correct for the filing deficiencies, the company failed to do so. *See* ''Background'' section, above. Therefore, in accordance with section 776(a) of the Act and section 351.308(c) of the Department's regulations, in reaching our preliminary determination, we have used total facts available for Polypet because the information necessary to calculate a margin for Polypet is not on the record. *See Corroboration Memorandum.*

The Department also finds that Polypet did not cooperate to the best of its ability because it did not seek our guidance in its attempts to provide us with acceptable responses and it ignored the instructions we provided the company on how to file its response. Moreover, Polypet did not put forth its maximum effort to answer the questionnaire and therefore, pursuant to 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for Polypet.

Because there are no prior administrative reviews and no other information has been placed on the record, as AFA, we are assigning Indorama and SK Keris the higher of: (1) The highest margin listed in the notice of initiation; or (2) the margin calculated for any respondent in this investigation. For AFA, we have selected the margin from the petition, since the margin derived from information in the petition exceeds the margin calculated for the remaining mandatory respondent. When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition), it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

Our analysis of the petitioner's methodology for calculating the export price (''EP'') and normal value (''NV'') in the petition is discussed in the initiation notice. *See Initiation Notice.* To corroborate the petitioner's EP and NV calculations, we compared the prices and expenses used to the source documents upon which the petitioner's methodology was based as well as information submitted in Indorama's questionnaire response.

As discussed in the *Corroboration Memorandum,* we found that the EP and NV information in the petition was reasonable and, therefore, we preliminarily determine that the information has probative value. Accordingly, we find that the highest margin based on that information, 27.61 percent, is corroborated within the meaning of 776(c) of the Act. Therefore, for the preliminary determination, we have applied a margin of 27.61 percent to SK Keris and Polypet. Because these are preliminary margins, the Department will consider all margins on the record at the time of the final

determination for the purpose of determining the most appropriate margin for these companies.

Fair Value Comparisons

To determine whether sales of PET resin from Indonesia to the United States were made at less than fair value (''LTFV''), we compared the EP and constructed export price (''CEP'') to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to NVs. Any specific changes to the EP, CEP, or NV calculations are discussed in the October 20, 2004, calculation memorandum for Indorama, which is on file in the CRU (''*Calculation Memorandum*'').

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market, where possible. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

We have relied on four criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: (1) Intrinsic viscosity; (2) blend; (3) copolymer/homopolymer; and (4) additives.

Date of Sale

In its questionnaire responses, Indorama reported home market sales using invoice date as the date of sale. For U.S. sales with selling terms of free on board (FOB'') and cost, insurance and freight (''CIF''), Indorama reported the invoice date as the date of sale. For U.S. sales with selling terms of delivered duties paid (''DDP''), Indorama reported the sales contract date as the date of sale, because of the time lag between sales contract date (where the quantity and price were established) and the invoice date. Based on the description of the sales process provided by Indorama, we have used invoice date as the date of sale for all sales, with the exception of U.S. DDP sales. For U.S. DDP sales, we preliminarily determine that price and quantity (*i.e.,* the material terms of sale) are established at the time of the sales contract. Therefore, in accordance with 19 CFR 351.401(i), we have relied on the sales contract date for U.S. DDP sales.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 722(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections 772(c) and (d) of the Act.

We calculated EP and CEP, as appropriate, based on the prices charged to the first unaffiliated customer in the United States. We classified certain sales as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation. We also found that the respondent made CEP sales during the POI. These sales are properly classified as CEP sales because these sales were made to unaffiliated customers after importation into the United States.

We based EP on the DDP, CIF, or FOB price to unaffiliated purchasers in the United States. We identified the starting price, where appropriate, by accounting for rebates, where applicable. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight (plant to port), international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight from port to warehouse, U.S. warehousing expense, U.S. inland freight from warehouse to unaffiliated customer. *See Calculation Memorandum.*

We based CEP on the DDP price to unaffiliated purchasers in the United States. We identified the starting price, by accounting for rebates, where applicable. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight (plant to port), international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight from port to warehouse, U.S. warehousing expense, U.S. inland freight from warehouse to unaffiliated customer. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and credit expenses), and inventory carrying costs. Where applicable, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP or CEP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. Because Indorama's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we preliminarily determine that the home market was viable.

In deriving NV, we made adjustments as detailed in the ''Calculation of Normal Value Based on Home Market Prices'' and ''Calculation of Normal Value Based on Constructed Value'' sections, below.

B. Cost of Production Analysis

As noted above, based on our analysis of an allegation made by the petitioner on August 10, 2004, we found that there were reasonable grounds to believe or suspect that sales of PET resin in the home market were made at prices below the COP. Accordingly, pursuant to section 773(b)(2)(A)(i) of the Act, we initiated a company-specific sales-below-cost investigation to determine whether sales of PET resin were made at prices below the COP.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (''G&A'') expenses, interest expenses, and home market packing costs.

We relied on COP information submitted by Indorama in its cost questionnaire responses, except for the following adjustments:

We recalculated the G&A expense rate based upon Indorama's unconsolidated income statement. *See* Cost Analysis Memorandum from Trinette Ruffin to Neal Halper, dated October 20, 2004 (''*Indorama's Cost Analysis Memorandum*''). We also recalculated the net financial expense rate based upon Indorama's consolidated income statement. *See Indorama's Cost Analysis Memorandum.*

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP for Indorama to its home market sales of PET resin, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were adjusted for any applicable billing adjustments, rebates, movement charges, and indirect selling expenses. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. If so, we disregard the below-cost sales.

We found that, because less than 20 percent of Indorama's home market sales within an extended period of time were made at prices below the COP, we are not excluding any sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[2] including selling functions,[3] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices [4]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make an LOT adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from Indorama regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Indorama for each channel of distribution. Indorama reported that it sells to different types of customers in the home market, and to end users and traders to the United States. Indorama reported a single LOT in the home market and has not requested an LOT adjustment. We examined the information reported by Indorama and found that home market sales to all customer categories were identical with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that Indorama had only one LOT for its home market sales.

Indorama made both EP and CEP sales to the United States during the POR. Both the EP and CEP sales were made through the same channel of distribution (*i.e.*, sales from the manufacturer directly to the customer). The EP and CEP selling activities do not differ from the home market selling activities. Therefore, we find that the U.S. LOT is similar to the home market LOT and an LOT adjustment or a CEP offset is not necessary. See section 773(a)(7)(A) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-factory or delivered prices to unaffiliated customers. We identified the correct starting price, where appropriate, by accounting for billing adjustments and rebates. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments for the following movement expenses, where appropriate, in accordance with section 773(a)(6)(B)(ii) of the Act: foreign inland freight (from plant to customer) expenses and inland

[2] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[4] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

insurance expenses. In addition, where appropriate, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses and imputed inventory carrying costs. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the comparison market or on U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the home market sales and U.S. sales, where appropriate, as certified by the Federal Reserve.

Verification

As provided in section 782(i) of the Act, we will verify all information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all imports of subject merchandise from Indonesia, except imports of subject merchandise produced and exported by Indorama which has a *de minimis* rate, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
P.T. Indorama Synthetics Tbk.	0.74 (*de minimis*)
P.T. Polypet Karyapersada.	27.61
P.T. SK Keris	27.61
All Others	18.65

All Others

All companies that we examined have either a *de minimis* margin or rates based on total AFA. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(B) of the Act, we have calculated a simple average of the three margin rates we have determined in the investigation.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than 50 days after the date of publication of this preliminary determination or one week after the issuance of the last verification report, whichever is later. Rebuttal briefs must be filed five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of this preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: October 20, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2900 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Notice of Initiation of Antidumping Duty New Shipper Review

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

ACTION: Notice of Initiation of Antidumping New Shipper Review of Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil.

EFFECTIVE DATE: October 28, 2004.

SUMMARY: On September 27, 2004, the Department of Commerce (''the Department'') received a request to conduct a new shipper review of the antidumping duty (''AD'') order on hot-rolled flat-rolled carbon quality steel products from Brazil. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d) (2003), we are initiating an AD new shipper review for Companhia Siderrgica de Tubaro (''CST''), a producer and exporter of hot-rolled flat-rolled carbon quality steel products from Brazil.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi at (202) 482–0405 and (202) 482–8221, respectively; Antidumping and Countervailing Duty Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 2004, the Department received a timely request from CST, in accordance with 19 CFR 351.214(c), for a new shipper review of the AD order on certain hot-rolled flat-rolled carbon quality steel products from Brazil, which has a September semiannual anniversary month. *See Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel*

Products from Brazil, 67 FR 11093 (March 12, 2002).

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), CST certified that it did not export subject merchandise to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer who exported subject merchandise during the POI. Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States. CST indicated in its request that because it sold the subject merchandise to an unaffiliated customer, it could not provide the Department with documentation establishing the exact date of entry. *See* submission from Willkie Farr & Gallagher LLP on behalf of Companhia Siderrgica de Tubaro to the Department regarding Request for New Shipper Review, dated September 27, 2004 (''NSR Request''). Pursuant to 19 CFR 351.214(b)(2)(iv), CST also submitted documentation establishing the volume of the shipment and the date of the first sale to an unaffiliated customer in the United States. Both the date of shipment and the date of sale of the subject merchandise fall in the March 1, 2004, through August 31, 2004, period of review. *See* NSR Request.

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), and based on record information and our analysis of proprietary import data from U.S. Customs and Border Protection (''CBP''), we find that CST has met the Department's requirements for initiating an AD new shipper review. See New Shipper Initiation Checklist on file in Import Administration's Central Records Unit, Room B–099 of the Herbert H. Hoover Building, 1401 Constitution Avenue, NW. Therefore, we are initiating a new shipper review for CST. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review. *See* 19 CFR 351.214(i).

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review, initiated in the month following the semiannual anniversary month, will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this new shipper review is:

New shipper review proceeding	Period of review
Companhia Siderúrgica de Tubarão	03/01/04–08/31/04

We will instruct CBP to allow the importer, until the completion of the review, to post a bond or security in lieu of a cash deposit for each entry of the subject merchandise produced and exported by the above-listed company, in accordance with section 751(a)(2)(iii) of the Act and 19 CFR 351.214(e). Because CST certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will permit the bonding privilege only with respect to entries of subject merchandise for which CST is both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214(d).

Dated: October 22, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2897 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–818

Notice of Extension of Time Limit for Preliminary Results of Administrative Review: Low Enriched Uranium from France

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: Pursuant to section 751(a)(3)(A)of the Tariff Act of 1930, as amended, (the Act), the Department of Commerce (the Department) is extending the time limit for the preliminary results in the antidumping duty administrative review of low enriched uranium from France until no later than February 28, 2005.

EFFECTIVE DATE: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Myrna Lobo at (202) 482–0197 or (202) 482–2371, respectively; Office of Antidumping/Countervailing Duty Operations, Office VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A)of the Act and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the preliminary results within the prescribed time period, section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, allow the Department to extend the deadline to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

Background

On March 26, 2004, the Department initiated an administrative review of the antidumping duty order on low enriched uranium from France in order to determine whether subject merchandise was sold into the United States at less–than-fair–value. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* (69 FR 15788). The period of review (POR) is February 1, 2003 through January 31, 2004.

Extension of Time Limits for Preliminary Results

Due to the complexity of the cost of production issues in this case, including a major input cost allegation by petitioners, the Department finds that it is not practicable to complete the preliminary results within the time limits mandated by section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the preliminary results, from October 31, 2004 until no later than February 28, 2005. This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 21, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2899 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–583–840)

Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Polyethylene Terephthalate (PET) Resin from Taiwan

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

ACTION: Notice of negative preliminary determination of sales at less than fair value and extension of final determination.

EFFECTIVE DATE: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Ashleigh Batton at (202) 482–1376 or (202) 482–6309, respectively; AD/CVD Enforcement, Office 1, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of PET Resin from Taiwan are not being sold, or are not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

Petitioner

The petitioner in this investigation is the United States PET Resin Producers Coalition (the petitioner).[1]

Case History

This investigation was initiated on April 13, 2004. *See Notice of Initiation of Antidumping Duty Investigation: Bottle–Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR at 21082 (April 20, 2004) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

The Department of Commerce (the Department) set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, 69 FR at 21083. No responses were received.

On May 10, 2004, the Department issued a letter providing interested parties an opportunity to comment on the Department's proposed model match characteristics and its hierarchy of characteristics. Between May 17, 2004, and June 3, 2004, the Department received comments and/or rebuttal comments on model matching from the petitioner, Far Eastern Textiles, Reliance Industries Ltd., South Asian Petrochem Ltd. and P.T. Indorama Synthetics. The Department took these comments into consideration in developing the model matching characteristics and hierarchy for all of the PET Resin antidumping investigations.

On May 19, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. *See Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR at 28948 (May 19, 2004) (ITC Preliminary Determination).

On June 9, 2004, the Department issued its antidumping duty questionnaire to Far Eastern Textile Ltd. (Far Eastern), specifying that the responses to Section A and Sections B–C would be due on June 30, 2004, and July 16, 2004, respectively.[2] We received responses to Sections A–C of the antidumping questionnaire and issued supplemental questionnaires where appropriate. On August 3, 2004, we received an allegation of sales below cost from the petitioner. On September 1, 2004, pursuant to section 732(e) of the Act, the Department initiated a cost investigation for Far Eastern's Taiwanese sales of PET Resin.[3] Far Eastern submitted its response to Section D on September 24, 2004.

On June 30, 2004, the petitioner requested that the Department postpone the preliminary determination in this investigation. Because there were no compelling reasons to deny the request, we postponed the preliminary determination to October 20, 2004, under section 733(c)(1) of the Act. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Bottle–Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 48842, (August 11, 2004).

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. On October 6, 2004, we received a request to postpone the final determination from the petitioner, the United States PET Resin Producers Coalition. Since this preliminary determination is negative, and there is no compelling reason to deny the petitioner's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: 1) a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or 2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. In the petition, the petitioner identified three potential producers and exporters of PET Resin in Taiwan: Shinkong Synthetic Fibers Corporation, Far Eastern, and Hualon Corporation.

[1] The petitioner in this investigation is the United States PET Resin Producers Coalition, an *ad hoc* coalition of the four largest U.S. PET resin producers that includes: DAK Americas, LLC; Nan Ya Plastics Corporation America; Voridian; and Wellman, Inc.

[2] Section A of the questionnaire requests general information concerning the company corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

[3] *See Memorandum to Susan Kuhbach, Re: Investigation of Polyethylene Terephthalate Resin from Taiwan: Petitioner's Allegation of Sales Below the Cost of Production for Far Eastern Textile*, dated August 27, 2004.

Based on statistics obtained from U.S. Customs and Border Protection (CBP), the Department selected Far Eastern as the mandatory respondent.[4] On June 9, 2004, the Department issued an antidumping questionnaire to Far Eastern.

Period of Investigation

The Period of Investigation (POI) is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition in March 2004.

Scope of Investigation

For the purpose of this investigation, the product covered by this scope is bottle–grade PET resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle–grade PET resin that contains various additives introduced in the manufacturing process.

The scope does not include post–consumer recycle (PCR) or post–industrial recycle (PIR) PET resin; however, included in the scope is any bottle–grade PET resin blend of virgin PET bottle–grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigation. Fiber–grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram is also outside the scope of the investigation.

The bottle–grade PET resin products subject to this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3907.60.0100 and 3907.60.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We did not receive any scope comments from interested parties within the comment period.

[4] See Memorandum from Constance Handley, Program Manager, to Susan Kuhbach, Director of Office 1, RE: Selection of Respondents, dated May 12, 2004.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Taiwan during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on four criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product: 1) Intrinsic Viscosity; 2) Blend; 3) Copolymer/Homopolymer; and 4) Additives. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product made in the ordinary course of trade.

Date of Sale

In its questionnaire responses, Far Eastern reported home market sales using shipping date as the date of sale because the ship date precedes the invoice date; invoices are issued in the home market after the product has shipped. Based on the description of the sales process provided by Far Eastern, and in keeping with Department practice, we used the date of shipment as the date of sale for all home market sales. [5] For U. S. sales, Far Eastern reported the customs clearance date as date of sale. The customs clearance date precedes the invoice date by 2 to 4 days; again, the product is invoiced once it has left the factory. For sales where the ship date occurred before the customs clearance date, we used the shipping date as the date of sale.

Fair Value Comparisons

To determine whether sales of PET resin were made in the United States at LTFV, we compared the export price (EP) to the normal value (NV), as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted–average EPs. We compared these to weighted–average home market prices in Taiwan.

Export Price

For the price to the United States, we used EP, as defined in section 772(a) of the Act. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 772(c) of the Act.

In accordance with section 772(c)(2) of the Act, for EP sales, we made deductions from the starting price for movement expenses, discounts, billing adjustments, export taxes, duties, and rebates, where appropriate.

We deducted inland freight from the plant/warehouse to port of exit, brokerage and handling, harbor construction fee in the country of manufacture, trade promotion fee in the country of manufacture, international freight, marine insurance, brokerage and handling incurred in the United States, U.S. inland freight from port to warehouse, U.S. warehousing expense, and U.S. customs duty.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs the Department to calculate NV based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), and that there is no particular market situation that prevents a proper comparison with the EP or CEP. Under the statute, the Department will normally consider quantity (or value) insufficient if it is less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. We found that Far Eastern had a viable home market for PET resin. As such, Far Eastern submitted home market sales data for the calculation of NV.

In deriving NV, we made adjustments as detailed in the following Calculation of Normal Value Based on Home Market Prices section.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that PET resin sales were made in Taiwan at prices below the cost of production (COP). *See Memorandum to Susan Kuhbach from Ashleigh Batton and Daniel O'Brien re. Petitioner's Allegation of Sales Below the Cost of Production for Far Eastern Textile*, dated August 27, 2004. As a result, the Department is conducting an

[5] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000) and accompanying Decision Memorandum at Comment 11; Final Results of Antidumping Administrative Review: Stainless Steel Bar From Japan, 65 FR 13717 (March 14, 2000) and accompanying Decision Memorandum at Comment 1.*

investigation to determine whether Far Eastern made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market G&A expenses, including interest expenses and packing expenses. We relied on the COP data submitted by Far Eastern in its cost questionnaire responses except for the following adjustments:

a. We adjusted the reported cost of manufacture (COM) to reflect the highest of transfer price, market price and affiliated suppliers' COP for the inputs purchased from affiliated suppliers;

b. We based Far Eastern's G&A expense ratio on Far Eastern's company–wide data rather than its divisional data as submitted.

2. Test of Home Market Sales Prices

We compared the weighted–average COP for Far Eastern to its home–market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model–specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time. We found that Far Eastern made sales below cost and we disregarded such sales where appropriate.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[6] including selling functions,[7] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[8]) we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

We obtained information from Far Eastern regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Far Eastern for each channel of distribution. Our LOT findings are summarized below.

Far Eastern reported that it sells to end users and traders in the home market, and to U.S. end users and wholesalers. Far Eastern reported a single LOT in the home market and has not requested an LOT adjustment. We examined the information reported by Far Eastern and found that home market sales to both customer categories were identical with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that Far Eastern had only one LOT for its home market sales.

Far Eastern made only EP sales to the United States during the POI. The EP sales were all made through the same channel of distribution (*i.e.*, sales from the manufacturer directly to the customer). The EP selling activities differ slightly from the home market selling activities. In determining whether separate LOTs exist between U.S. EP sales and home–market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. Far Eastern's sales to end–users and traders in the homemarket and in the U.S. market do not involve significantly different selling functions. Therefore, we find that the U.S. LOT is similar to the home market LOT and an LOT adjustment is not necessary. *See* section 773(a)(7)(A) of the Act.

D. Calculation of Normal Value Based on Home Market Prices

We determined NV for Far Eastern as follows. We made adjustments for any differences in packing and deducted home market movement expenses, rebates, and discounts pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, where applicable in comparison to EP transactions, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments for Far Eastern's EP transactions by deducting direct selling expenses incurred for home market sales (*e.g.*, credit expense and warranty expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses, and bank charges).

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sale, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

[6] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[7] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[8] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination for Far Eastern.

The weighted–average dumping margins are provided below:

Producer/Exporter	Weighted–Average Margin (Percentage)
Far Eastern	0.09
All Others	0.09

Suspension of Liquidation

Pursuant to Section 733(b)(3) of the Act, because the estimated weighted–average dumping margin for the examined company is de minimis, we are not directing CBP to suspend liquidation of entries of PET resin from Taiwan.

Disclosure

The Department will disclose its calculations in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary negative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of PET resin from Taiwan is materially injuring, or threatens material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs on the later of 50 days after the date of publication of this notice or one week after the issuance of the verification reports. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address, and telephone number; 2) the number of participants; and 3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 20, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–24095 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils from Belgium; Extension of Time Limit for the Final Results of Sunset Review of Countervailing Duty Order

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

ACTION: Notice of Extension of Time Limit for the Final Results of Sunset Review of Countervailing Duty Order: Stainless Steel Plate in Coils from Belgium.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its final results in the sunset review of the countervailing duty order on stainless steel plate in coils (''SSPC'') Belgium. The Department intends to issue the final results of this sunset review on or about October 28, 2004.

EFFECTIVE DATE: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

Extension of Final Results of Reviews:

In accordance with section 751(c)(5)(B) of the Tariff Act of 1930, as amended (''the Act''), the Department may extend the time for making a determination in a sunset review if the review is ''extraordinarily complicated.'' The Department may treat sunset reviews as extraordinarily complicated if the issues are complex, in accordance with section 751(c)(5)(C)(ii) of the Act. As discussed below, the Department has determined that this review is extraordinarily complicated and is therefore extending the deadline for issuing the final results.

On April 1, 2004, the Department initiated a sunset review of the countervailing duty order on SSPC from Belgium. *See Initiation of Five–Year (Sunset) Reviews*, 69 FR 17129 (April 1, 2004). The Department, in this proceeding, determined that it would conduct an expedited sunset review of this order based on inadequate responses to the notice of initiation from respondent interested parties. The Department's final results of this review were originally scheduled for July 30, 2004 and were extended on July 29, 2004 and on September 20, 2004. The Department, however, needs additional time to consider complex issues related to the appropriate countervailing duty rate likely to prevail if the order is revoked. Specifically, the Department is considering issues surrounding the allocation periods of certain programs. Thus, because of the complex issues in this proceeding , the Department will extend the deadline for issuance of the final results. The Department intents to issue the final results on or about October 28, 2004, in accordance with sections 751(c)(5)(B) and 751(c)(5)(C)(ii) of the Act.

Dated: October 15, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–2898 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Stainless Steel Sheet and Strip in Coils From Italy; Extension of Time Limit for the Preliminary Results of Sunset Review of Countervailing Duty Order

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

ACTION: Notice of extension of time limit for the preliminary results of sunset review of countervailing duty order: stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its preliminary results in the sunset review of the countervailing duty order on stainless steel sheet and strip in coils (''SSSS'') from Italy. The Department intends to issue the final results of this sunset reviews on or about November 22, 2004.

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

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

Extension of Final Results of Reviews

On June 1, 2004, the Department initiated a sunset review of the countervailing duty order on SSSS from Italy. *See Initiation of Five-Year (Sunset) Reviews,* 69 FR 30874 (June 1, 2004). The Department, in this proceeding, determined that it would conduct a full sunset review of this order based on adequate responses to the notice of initiation from domestic and respondent interested parties. The Department's preliminary results of this review were originally scheduled for September 20, 2004 and were extended on September 20, 2004. The Department, however, needs additional time to consider issues related to the appropriate countervailing duty rate likely to prevail if the order is revoked which the Department will provide to the International Trade Commission. Thus, the Department intends to issue the preliminary results on or about November 22, 2004, in accordance with sections 751(c)(5)(B) and 751(c)(5)(C)(ii) of the Tariff Act of 1930, as amended.

Dated: October 15, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–24151 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Monday, November 15, 2004, 12 p.m. to 5:30 p.m.; Tuesday, November 16, 2004, 8 a.m. to 5:30 p.m.; Wednesday, November 17, 2004, 8 a.m. to 5:30 p.m.; Thursday, November 18, 2004, and Friday, November 19, 2004, 8 a.m. to 3 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, review of feedback discussion approach with site visit team leaders, final judging of the 2004 applicants, learning and improvements for 2005 judging cycle, update on the 2005 program and review 2005 judges calendar. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 15, 2004 at 12 p.m. and adjourn at 3 p.m. on November 19, 2004. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Room A1038, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 7, 2004, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: October 22, 2004.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. 04–24102 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102104F]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice that Vendor Will Provide Year 2005 Cage Tags

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

ACTION: Notice of vendor to provide year 2005 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog allocation owners that they will be required to purchase their year 2005 cage tags from a vendor. The intent of this notice is to comply with regulations for the surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

ADDRESSES: Written inquiries may be sent to Brian R. Hooker, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, (978) 281–9220; fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fisheries regulations at 50 CFR 648.75(b) authorize the Regional Administrator of the Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the fishery management plan, shall be purchased. Notice is

hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the year 2005 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to allocation owners in these fisheries within the next several weeks.Authority: 16 U.S.C. 1801 et. seq.

Dated: October 22, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–24106 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Comment for Enhancement of the Initial Integrated Ocean Observing System (IOOS)

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of opportunity for written public comment; extension of comment period.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is extending to November 15, 2004, the comment period for the First Annual Integrated Ocean Observing System (IOOS) Development Plan that appeared in the **Federal Register** of October 15, 2004 (69 FR 199), page 61207. The plan is available at *http://www.ocean.us.* NOAA in response to requests is extending the comment period to allow interested persons additional time to submit comments. Comments should be submitted via e-mail to *k.stump@ocean.us* or in writing to Ms. Kristine Stump; Ocean.US; 2300 Clarendon Blvd., Suite 1350; Arlington, VA 22201.

DATES: Comments are due no later than the close of business on Monday, November 15, 2004.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Kristine Stump, Ocean.US at (703) 588–0855 or e-mail at *k.stump@ocean.us.*

Dated: October 22, 2004.

Alan Neuschatz,

Acting, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–24090 Filed 10–27–04; 8:45 am]

BILLING CODE 3510–10–P

COMMISSION ON REVIEW OF OVERSEAS MILITARY FACILITY STRUCTURE OF THE UNITED STATES

Public Meeting

AGENCIES: Commission on Review of Overseas Military Facility Structure of the United States (Overseas Basing Commission (OSBC)).

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, section 552 of title 5 U.S.C., this serves as public notice of a meeting of the Commission on the Review of Overseas Military Facility Structure of the United States. The Commission will meet to receive testimony from former military experts and members of Congress concerning matters relating to the overseas military facility structure of the United States. The OSBC Commission will convene to receive testimony from three panels. The first panel will be the former Deputy Secretary of Defense and Under Secretary of Defense (Comptroller), Dr. John J. Hamre; and the former U.S. Ambassador to NATO and U.S. Representative to Western European Union, Ambassador Robert E. Hunter. The second panel will be military experts that include General Charles A. Horner, former Combatant Commander of North American Aerospace Defense Command and U.S. Space Command as well as the Commander of 9th Air Force and U.S. Central Command Air Force during operations Desert Shield and Desert Storm; General Montgomery C. Meigs, former Commanding General, U.S. Army, Europe and 7th Army, and Commander of Multinational Stabilization Force in Bosnia-Herzegovina; General Charles T. ''Tony'' Robertson, Jr. former Combatant Commander for U.S. Transportation Command and Air Mobility Command; and General John H. Tilelli, Jr. former Combatant Commander of the United Nations Command, Republic of Korea/United States Combined Forces Korea and President of USO Worldwide Operations, as well as, Vice Chief of Staff of the Army and Deputy Chief of Army Operations. The OSBC will continue their discovery session with a third panel of defense policy experts: Prof. Thomas P.M. Barnett, Senior Strategic Researcher, U.S. Naval War College; Marcus Corbin, Senior Analyst at the Center for Defense Information; and Michael Noonan, research fellow (defense policy) and the National Security program director for the Foreign Policy Research Institute.

DATE: The meeting will be held on Nov 9, 2004, at 9:00 a.m., local time.

ADDRESS: The meeting will be held at the United States Senate, Dirksen Senate Office Building, Room SD138, 1st and C Streets, NE, Washington, DC. Security procedures at the Dirksen Senate Office Building may require inspection of purses, packages, screening of individuals, and presentation of a valid individual identification document. The building is physically accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Public Affairs, at (708) 204–0711.

Public Participation: Members of the general public wishing to address the Commission may submit their comments in writing to the Commission at the time of the meeting.

Supplementary Information: The Commission is established by Public Law 108–132 to provide Congress and the President with a thorough study and review of matters relating to the military facility structure overseas. The law requires the report to include a proposal for an overseas basing strategy to meet current and future DoD missions.

Dated: October 22, 2004.

Patricia J. Walker,

Executive Director, Commission on Review of Overseas Military Facility Structure of the United States

[FR Doc. 04–24070 Filed 10–27–04; 8:45 am]

BILLING CODE 6820–YK–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–31–000]

Algonquin Gas Transmission, LLC; Notice of Tariff Filing

October 22, 2004.

Take notice that on October 18, 2004, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing its annual Fuel Reimbursement Quantity (FRQ) filing in accordance with section 32 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff.

Algonquin states that it is making this Annual FRQ Filing prior to the October 31 due date specified by the tariff to provide advance rate information to customers preparing for the upcoming winter. Algonquin further states that because of the proven accuracy of the projection that is currently in effect from its 2003 FRQ filing, Algonquin proposes to retain the existing Fuel Reimbursement Percentages for the

annual period beginning December 1, 2004.

Algonquin states that copies of this filing were served upon all affected customers of Algonquin and interested state commissions.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 email 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2892 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–6–000]

Boston Edison Company, TransCanada Energy Ltd., Ocean State Power, Ocean State Power II; Notice of Filing

October 22, 2004.

Take notice that on October 19, 2004, Boston Edison Company (Boston Edison), TransCanada Energy Ltd. (TCE), Ocean State Power (OSP) and Ocean State Power II (OSP II) (jointly, Applicants) filed an application under section 203 of the Federal Power Act requesting authorization for the transfer of certain Power Purchase Agreements from Boston Edison to TCE.

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 November 8, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2882 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-41-002]

Dominion Transmission, Inc.; Notice of Tariff Filing

October 22, 2004.

Take notice that on October 18, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 36, to become November 1, 2004.

DTI states that the proposed change would provide revenue of $26.5 million from an incremental jurisdictional transportation service, based on the 12-month period ending October 31, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2894 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–29–000]

Florida Gas Transmission Company; Notice of Petition for Waiver of Penalties

October 22, 2004.

Take notice that on October 18, 2004, Florida Gas Transmission Company (FGT) tendered for filing a petition for waiver of Alert Day Penalties for all customers in the State of Florida for the month of September 2004.

FGT states that due to the four hurricanes, one tropical storm, and 292 tornadoes that hit Florida from mid-August through the end of September 2004, approximately 80 percent of FGT's delivery points in Florida had measurement and/or communications equipment failures at various times and for varying periods of time during the month of September.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2890 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–7–000]

Natural Gas Pipeline Company of America; Notice of Application

October 22, 2004.

Take notice that on October 18, 2004, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP05–7–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, for permission and approval to abandon certain storage field surface piping, and for authority to construct and operate additional facilities at its Sayre Storage Field located in Beckham County, Oklahoma. By this application, Natural seeks to: Provide an additional 10 Bcf of Nominated Storage Service (NSS) on Natural's Amarillo mainline system, increase Sayre's certificated peak day withdrawal from 400 MMcf/d to 600 MMcf/d, and increase Sayre's maximum working gas capacity to 57.1 Bcf, all as more fully described in the request which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Robert Wallace, Director, Storage Operations, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 or by phone at (630) 691–3780.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken; but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2881 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–612–001]

Northwest Pipeline Corporation; Notice of Tariff Filing

October 22, 2004.

Take notice that on October 20, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective October 29, 2004.

Substitute Tenth Revised Sheet No. 239.
Substitute Ninth Revised Sheet No. 281.
Substitute Fourth Revised Sheet No. 284.

Northwest states that the purpose of this filing is to submit substitute tariff sheets to replace sheets containing typographical errors that were filed on September 28, 2004, in the above referenced docket.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 email 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2889 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–30–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2004.

Take notice that on October 18, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2, revised tariff sheets as listed on Appendix A to the filing, to become effective December 1, 2004. In addition, Texas Eastern also filed its Annual Interruptible Revenue Reconciliation Report.

Texas Eastern states that the revised tariff sheets and the Annual Interruptible Revenue Reconciliation Report contained in the filing are being filed pursuant to section 15.6, Applicable Shrinkage Adjustment (ASA), and section 15.8, Periodic Reports, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that copies of its filing have been mailed or, if requested, emailed to all affected customers of Texas Eastern and interested state commissions.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2891 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88–67–080 and RP98–198–007]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 22, 2004.

Take notice that on October 18, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2004.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, et al. (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with section 26 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule

211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2893 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–015]

Wyoming Interstate Company, Ltd.; Notice of Negotiated Rate

October 22, 2004.

Take notice that on October 20, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing and as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to become effective November 20, 2004, and two firm transportation service agreements (FTSAs):

Fourth Revised Sheet No. 1
Second Revised Sheet No. 106
Second Revised Sheet No. 107

WIC states that the FTSAs are being submitted for Commission review under the Commission's negotiated rate and material deviation policies and have been listed on the tendered tariff sheet as potential non-conforming agreements.

WIC states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2880 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2205–006–VT]

Central Vermont Public Service Corporation; Notice of Availability of Supplemental Environmental Assessment

October 22, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47879), the Office of Energy Projects has reviewed the settlement agreement filed on July 3, 2003, on the relicensing of the Lamoille Hydroelectric Project, located on the Lamoille River, in Franklin, Lamoille, and Chittenden Counties, Vermont, and has prepared an Environmental Assessment (EA) to supplement the EA issued on October 8, 1991.

The Supplemental EA contains our analysis of the potential effects of the existing project and concludes that licensing the project under the settlement agreement, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the Supplemental EA is on file with the Commission and is available for public inspection at the Commission in the Public Reference Room. The Supplemental EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Lamoille Project No. 2205'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. For further information, contact John Smith

at (202) 502–8972 or by e-mail at *john.smith@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–2885 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Of Application To Amend Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

October 22, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change project boundary.

b. *Project No:* 1855–027.

c. *Date Filed:* October 12, 2004.

d. *Applicant:* USGen New England, Inc. (USGenNE).

e. *Name of Project:* Bellows Falls Project.

f. *Location:* The project is located on the Connecticut Rivers in Cheshire and Sullivan Counties New Hampshire and in Windham and Windsor Counties Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John Ragonese, FERC License Manager, USGen New England, Inc. Hydro Concord Office, 4 Park Street, Concord NH 03301, (603) 225–5528.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Shaffer at (202) 502–8944, or e-mail address: *Robert.Shaffer@ferc.gov.*

j. *Deadline for filing comments and or motions:* November 22, 2004.

k. *Description of Request:* USGenNE proposes to remove 8.8 acres of land that contains two unused surplus buildings and undeveloped surplus land that is not needed for project purposes. One of the buildings is listed on the National Register of Historic Places and the other may be eligible for listing. USGenNE proposes to transfer ownership of the property and structures to the Bellows Falls Historic Society. The 8.8 acres of land and the buildings are located in Windham County, Vermont.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2883 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Establishing Procedural Schedule for Relicensing

October 22, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2195–011.

c. *Date filed:* August 26, 2004.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Clackamas River Hydroelectric Project, P–2195 (formerly Oak Grove, P–135 and North Fork, P–2195 projects).

f. *Location:* On the Oak Grove Fork of the Clackamas River on Mount Hood National Forest, and on the Clackamas River in Clackamas County, Oregon, near Estacada, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Julie Keil, Portland General Electric, 121 SW Salmon Street, Portland, Oregon 97204, Phone: 503–464–8864.

i. *FERC Contact:* John Blair at 202–502–6092; e-mail *john.blair@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below.

k. *Deadline for filing motions to intervene and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing 44-megawatt Oak Grove development consists of a 100-foot-high dam at the lower end of Timothy Lake, and a 68-foot-high diversion dam below Lake Harriet, both on the Oak Grove Fork of the Clackamas River. The powerhouse is located on the Clackamas River. The Oak Grove development is located on U.S. Forest Service and Bureau of Land Management land. The 129-megawatt North Fork development is located on the Clackamas River and is composed of: a 206-foot-high dam with powerhouse located at the lower end of North Fork Reservoir; a 47-foot-high dam with powerhouse located at the lower end of Faraday Lake; and a 85-foot-high dam with powerhouse located at the lower end of Estacada Lake. The North Fork development is located on U.S. Forest Service and Bureau of Land Management land. On June 18, 2003, Oak Grove and North Fork licenses were amended combining the two projects into one license called the Clackamas River Project No. 2195.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Date
Application Acceptance	October 22, 2004.
Interventions & Protests due (60 days after Application Acceptance)	December 20, 2004.
Additional Information Due (90 days from Application Acceptance)	January 19, 2005.
Notice for Mandatory Terms & Conditions, Recommendations, Application Amendments, Ready for Environmental Analysis.	March 15, 2005.
Application Amendments Due (30 days after Notice)	April 13, 2005.
Portland General Electric files Settlement Agreement In Principle and Biological Evaluation, and resubmits 401 Water Quality Certificate application.	April 30, 2005.
Mandatory Terms & Conditions & Recommendations due (60 days from Mandatory Terms Notice)	May 13, 2005.
Portland General Electric's reply to Mandatory Terms & Conditions and Recommendations (105 days from Notice)	June 27, 2005.
Issue Draft Environmental Impact Statement (DEIS) and Biological Assessment; Initiate Endangered Species Act Consultation (ESA).	August 31, 2005.
Comments due on DEIS (45 days after issuance)	October 14, 2005.
ESA Completed; Biological Opinion due (135 days from initiation)	January 12, 2006.
Final Environmental Impact Statement (FEIS) Issued	March 15, 2006.
Forest Service files final 4(e) conditions (30 days after FEIS)	April 13, 2006.
Action due on 401 Water Quality Certificate application (one year after submittal)	April 30, 2006.
Ready for Commission Action	July 30, 2006.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the date of the Commission's issuance of the Notice Soliciting Terms and Conditions and Recommendations.

r. The license applicant must file no later than 60 days following the date of this Notice of Acceptance: (1) A copy of the water quality certification; or (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2884 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters, Reclassifying Shoreline, and Soliciting Comments, Motions To Intervene, and Protests

October 22, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–478.

c. *Date Filed:* October 7, 2004.

d. *Applicant:* Duke Power, a Division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and § § 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Energy Corporation, P.O. Box 1006, Charlotte, North Carolina, 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8764, or e-mail address: *shana.high@ferc.gov.*

j. *Deadline for filing comments and/or motions:* November 22, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–478) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power (Duke) is seeking Commission authorization to lease 0.582 acre of project land on Mountain Island Lake for a commercial/residential marina with one cluster dock having 14 boat slips. A permit would be issued by Duke to the Provident Development Group, Inc. The marina will provide access to the reservoir for Preservation Pointe subdivision, in Mecklenburg County, North Carolina. The application also requests Commission authorization to reclassify a portion of two small coves along the shoreline of Preservation Pointe that were reversed in the project's shoreline management plan. The coves were incorrectly classified as ''future commercial/residential'' and ''environmental''.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2886 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 21, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial Transfer of License.

b. *Project No.:* 4026–041.

c. *Date Filed:* August 19, as supplemented October 12, 2004.

d. *Applicants:* Androscoggin Reservoir Company (ARCO), Aziscohos Hydro Company, Inc. (Aziscohos), and Verizon Capital Corporation (Verizon), formerly known as NYNEX Credit Company (NYNEX).

e. *Name and Location of Project:* The Aziscohos Hydroelectric Project is located on the Magalloway River in Oxford County, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contact:* Chad P. Clark, Androscoggin Reservoir Company, C/O FPL Energy, 160 Capital Street, Augusta, ME 04330, (207) 623–8414.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* November 22, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–4026–041) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants state that NYNEX's corporate name was changed to Bell Atlantic Credit Corporation, which subsequently changed its name to Verizon. Applicants state further that, in June 2003, ARCO terminated its real property lease and project operation agreement with Aziscohos and, at the same time, Verizon's interests in the project, through a leveraged lease arrangement with Aziscohos, were terminated. Applicants now seek after-the-fact approval of the 2003 termination of Aziscohos' and Verizon's interest in the project.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number (P–4026) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2887 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–523–000]

Southern Natural Gas Company; Notice of Technical Conference

October 22, 2004.

Take notice that on September 30, 2004, the Commission issued an order [1] directing the Commission Staff to convene a technical conference to discuss the following issues raised by Southern Natural Gas Company (Southern) in its August 31, 2004 filing:

1. Southern's proposal to extend the notice period in the currently-effective section 39 of the General Terms and Conditions from 90 days to 24 months for contract demand reductions pursuant to an order of a state regulatory commission.

2. Southern's proposal to revise section 2.1(e) of the General Terms and Conditions to provide that primary receipt points may be added to or deleted from Exhibit A to a service agreement if they are in the same zones for which the shipper has contracted for firm service, and to allow shippers to add or delete primary delivery points from Exhibit B to a service agreement only if the additional delivery points are in the same zone as the shipper's current delivery points.

3. Southern's proposal to change its cash out price calculation to apply the high/low index price to the zero to two percent tolerance level.

4. Southern's pro forma proposal to revise section 14.2 of the General Terms and Conditions to apply the Storage Cost Reconciliation Mechanism to supply poolers.

Take notice that the conference will be held on Thursday, December 9, 2004, at 10 am (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

All interested parties and staff are permitted to attend.

Any questions or concerns about the conference should be directed to: Robert Machuga, Office Markets, Tariffs and Rates-South, Federal Energy Regulatory Commission, 888 First Street NE., Washington DC 20426, (202) 502–6004, *Robert.Machuga@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–2888 Filed 10–27–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Southern Natural Gas Company, 108 FERC ¶ 61,328 (2004).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7831–2]

Clean Air Act Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The charter for the Environmental Protection Agency's Clean Air Act Advisory Committee (CAAAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 section 9(c). The purpose of CAAAC is to provide advice and recommendations to the EPA Administrator on issues associated with

policy and technical issues associated with implementation of the Clean Air Act.

It is determined that CAAAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Pat Childers, CAAAC Designated Federal Officer, U.S. EPA, Mail Code 6102A, 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by e-mail *childers.pat@epa.gov.*

Dated: September 3, 2004.

Jeff Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 04–24135 Filed 10–27–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 29 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–0501.

Title: Section 76.206, Candidate Rates; Section 76.1611, Political Cable Rates and Classes of Time.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,375.

Estimated Time per Response: 0.5 to 10 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 139,750 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 315 of the Communications Act directs cable operators to charge political candidates the ''lowest unit charge of the station'' for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

47 CFR 76.206 and 76.1611 require cable system operators to disclose and make available to candidates all discount privileges available to commercial advertisers. In addition, §§ 76.206 and 76.1611 require cable systems to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time: immediately preemptible, preemptible with notice, fixed, fire sale, and make good. Section 76.206 also requires cable systems to calculate the lowest unit charge. Furthermore, cable systems are required to review their advertising records throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits.

The disclosures assure candidates that they are receiving the same lowest unit charge as other commercial advertisers.

OMB Control Number: 3060–0502.

Title: Section 73.1942, Candidate Rates.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12,977.

Estimated Time per Response: 0.5 to 20 hours.

Frequency of Response: Recordkeeping; On occasion, semi-annual, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 733,201 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 315(b) of the Communications Act directs broadcast stations to charge political candidates the ''lowest unit charge of the station'' for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

47 CFR 73.1942 requires broadcast licensees to disclose and make available to candidates all discount privileges available to commercial advertisers. In addition, § 73.1942 requires broadcast licensees to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). Section 73.1942 also requires licensees to calculate the lowest unit charge. Stations are also required to review their advertising records throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits.

The disclosures assure candidates that they are receiving the same lowest unit charge as other commercial advertisers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24120 Filed 10–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before December 27, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0184.

Title: Section 73.1740, Minimum Operating Schedule.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 368.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 184 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: 47 CFR section 73.1740 requires licensees of commercial broadcast stations to notify the FCC in Washington, DC, when events beyond their control make it impossible to continue operation or to adhere to the required operating schedules set forth in this section. In addition, the FCC must be notified when normal operation is resumed. No further authority is needed for limited operation or discontinued operation for a period not exceeding 30 days. Should events beyond the licensees control make it impossible for compliance within the required 30-day time period, an informal written request shall be submitted to the FCC requesting the amount of additional time that the licensee deems necessary. The data is used by FCC staff to authorize temporarily a limited operation or a discontinuance of operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24121 Filed 10–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 21, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before December 27, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, individuals or household, and State, local or tribal government.

Number of Respondents: 250,520.

Estimated Time per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement, and other 10 years reporting requirement.

Total Annual Burden: 219,205 hours.

Total Annual Cost: $50,104,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application or ''long form'' for market-based licensing and site-by-site licensing in the Wireless Telecommunications Bureau's (WTB) Radio Services' Universal Licensing System (ULS).

The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

The Wireless Telecommunications Bureau will be making changes to FCC Form 601 based on:

(1) FCC 04–135—Adopted 6/10/2004—Released 7/29/2004.

(a) Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, WT Docket No. 03–66, RM–10586.

(b) Part 1 of the Commission's Rules—Further Competitive Bidding Procedures, WT Docket No. 03–67.

(c) Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions, MM Docket no. 97–217.

(d) Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, WT Docket No. 02–68, RM–9718.

(e) Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00–230.

(2) FCC 04–168—Adopted 7/8/2004—Released 8/6/2004.

(a) Improving Public Safety Communications in the 800 MHz Band, WT Docket 02–55.

(b) Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, ET Docket No. 00–258.

(c) Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, RM–9498.

(d) Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, RM–10024.

(e) Petition for Rule Making of UT Starcom, Inc., concerning the Unlicensed Personal Communications Service, ET Docket No. 95–18.

(f) Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service, ET Docket No. 95–18.

(3) FCC 04–23—Adopted 2/4/2004—Released 2/12/2004.

(a) Review of Quiet Zones Application Procedures, WT Docket No. 01–319. There is no change to the estimated average burden and number of respondents at this time as it is unknown as to how many additional respondents may partake in the changes required due to the adoptions of the above noted Report & Orders.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–04–58–C; DA 04–3005; Report No. AUC–04–58–D; DA 04–3270 (Auction No. 58)]

Broadband PCS Spectrum Auction Start Date Re-Scheduled for January 26, 2005; New Pre-Auction Dates and Deadlines Established; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payment and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of 242 Broadband Personal Communications Service (PCS) licenses and announces that the auction initially scheduled to commence on January 12, 2005 is rescheduled to begin on January 26, 2005. In addition, this document announces the rescheduling of certain pre-auction events and deadlines. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 58 is scheduled to begin on January 26, 2005.

FOR FURTHER INFORMATION CONTACT: *Auctions and Spectrum Access Division (WTB):* For legal questions: Audrey Bashkin or Scott Mackoul at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Lisa Stover at (717) 338–2888. For service rule questions: Mobility Division, WTB, Kathy Harris or Erin McGrath at (202) 418–0620. For technical questions: Chris Miller or JoAnn Epps at (202) 418–0620.

Media Contact: Lauren Patrich at (202) 418–7944.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 58 Procedures Public Notice* released on September 16, 2004, and the public notice released October 15, 2004, rescheduling the upcoming auction and certain pre-auction events and deadlines. In light of the Commission's decision in the *Memorandum Opinion and Order*, FCC 04–249, released October 15, 2004, the Bureau rescheduled the start date and the pre-auction dates and deadlines for Auction No. 58 in order to provide additional time for bidder preparation and planning. The Bureau originally provided more than six months for bidders to prepare for Auction No. 58, which normally should provide more than sufficient time for planning purposes. Requests to amend or waive the Commission's eligibility rules for certain broadband PCS licenses, however, created some uncertainty regarding whether such licenses would be available in open or closed bidding. Now that a final decision has been made on those matters, the Commission therefore believes a slight modification to its auction schedule is warranted. The complete text of the *Auction No. 58 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 58 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (''BCPI''), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. The *Auction No. 58 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/58/*.

I. General Information

A. Introduction

1. The *Auction No. 58 Procedures Public Notice*, announces the procedures and minimum opening bids for the upcoming auction of licenses in the broadband personal communication services (''PCS'') scheduled for January 26, 2005 (Auction No. 58). On June 18, 2004, in accordance with the Balanced Budget Act of 1997, the Wireless Telecommunications Bureau (''WTB'') released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used for the auction of broadband PCS licenses in Auction No. 58. The Bureau released a second public notice on August 3, 2004, revising the list of licenses available and seeking comment on procedures for the auction of those licenses. The Bureau received 19 comments and five reply comments in response to the *Auction No. 35 Comment Public Notice*, 65 FR 55243, September 13, 2000, and no comments in response to the *Auction No. 58 Revised Inventory Public Notice*, 69 FR 49897, August 12, 2004.

i. Background of Proceeding

2. Auction No. 58 includes licenses for A, C, D, E, and F blocks of broadband PCS spectrum. This auction will be the fifth auction of C block broadband PCS spectrum and the fourth auction of F block broadband PCS spectrum. The Commission initially designated the C and F block licenses to be held only by those entities that qualified as ''entrepreneurs'' under the Commission's rules. Specifically, only those entities that qualified as entrepreneurs could bid on the C and F block licenses and hold the licenses for the first five years following the date of the initial license grant. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C, E and F block licenses that had been returned to, or reclaimed by, the Commission.

3. In 2000, the Commission revised certain service and auction rules for the C and F block licenses. Among the modifications to the Commission's rules, the *C/F Block Sixth Report and Order*, 65 FR 53624, September 5, 2000, reconfigured the size of 30 megahertz C block licenses available for auction, creating three 10 megahertz licenses. The Commission also removed the entrepreneur eligibility restrictions for some C block licenses. It did so by first establishing two categories for licenses: Tier 1 being comprised of those Basic Trading Areas (BTAs) with populations that, according to the 1990 census, are equal to or greater than 2.5 million and Tier 2 being comprised of the remaining BTAs. The Commission then established ''open bidding'' (*i.e.*, bidding without entrepreneur eligibility restrictions) for two of the three newly reconfigured 10 megahertz C block licenses in Tier 1 and for one of the three newly reconfigured 10 megahertz C block licenses in Tier 2. The remaining 10 megahertz C block licenses in Tier 1 and 2 were reserved for entrepreneurs. Finally, with respect to available 15 megahertz C block licenses, the Commission eliminated eligibility restrictions for such licenses in Tier 1, but maintained the eligibility requirements in Tier 2.

4. Following the adoption of the *C/F Block Sixth Report and Order*, the Commission held Auction No. 35, which included 422 C and F block broadband PCS licenses. Certain of the licenses won at auction, however, were not granted because the spectrum was the subject of litigation and/or bankruptcy proceedings. Recent settlement in a number of those matters has made C and F block spectrum available again for licensing. This spectrum, along with spectrum associated with other licenses that cancelled or were otherwise returned to the Commission, is now included in the inventory for Auction No. 58.

5. Additionally, following the announcement of Auction No. 58, CTIA—The Wireless Association™ (''CTIA'') filed a petition for rulemaking, or in the alternative, a request for waiver of the eligibility restrictions placed on certain C block licenses (''CTIA Petition''). This petition was placed on public notice and will be addressed in a proceeding separate from the instant one which is intended to establish procedures for the conduct of Auction No. 58. The eligibility issue raised in the CTIA Petition was also addressed in nearly all of the comments filed pursuant to the *Auction No. 58 Comment Public Notice*, as well as in the Verizon Wireless petition for reconsideration. As explained in more detail below, this issue is beyond the scope of that public notice and will be addressed separately. Accordingly, unless the Commission decides otherwise, the current eligibility structure for C block licenses (*i.e.*, closed bidding for certain C block licenses by only those entities that qualify as entrepreneurs) will remain in effect for Auction No. 58.

ii. Licenses To Be Auctioned

6. Auction No. 58 will offer 242 broadband PCS licenses. A complete list of the licenses available in Auction No. 58 and their description is included in Attachment A of the *Auction No. 58 Procedures Public Notice*.

7. While most licenses are available to all bidders in open bidding, 119 C block licenses are available only to entrepreneurs in closed bidding. In order to qualify as an ''entrepreneur,'' an applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have had gross revenues of less than $125 million in each of the last two years and must have less than $500 million in total assets.

8. For C and F block licenses available in open bidding, bidding credits are available to small and very small businesses, or consortia thereof, as defined in the Commission's rules. Specifically, an entity will be considered a small business if it, together with its affiliates, has less than $40 million in average annual gross revenues for the preceding three years. An entity will be considered a very small business if it, together with its affiliates, has less than $15 million in average annual gross revenues for the preceding three years. Small business and very small business bidding credits are not available for C block licenses won in closed bidding or for licenses in the A, D, or E blocks.

9. The following table contains the block/eligibility status/frequency cross-reference list for Auction No. 58:

Frequency block	Eligibility status		Bandwidth (MHz) (unless otherwise noted in Attachment A)	Frequency (MHz) (unless otherwise noted in Attachment A)
	Tier 1	Tier 2		
A	n/a	n/a	30	1850–1865, 1930–1945
C1	Open	Closed	15	1902.5–1910, 1982.5–1990
C2	Open	Closed	15	1895–1902.5, 1975–1982.5
C3	Closed	Closed	10	1895–1900, 1975–1980
C4	Open	Closed	10	1900–1905, 1980–1985
C5	Open	Open	10	1905–1910, 1985–1990
D	n/a	n/a	10	1865–1870, 1945–1950
E	n/a	n/a	10	1885–1890, 1965–1970
F	Open	Open	10	1890–1895, 1970–1975

10. In some cases, licenses are available for only part of a market or may not include all of the spectrum associated with a particular frequency block in Auction No. 58. Dark gray boxes indicate that no license of the

particular tier/frequency block combination will be available in Auction No. 58. See Attachment A of the *Auction No. 58 Procedures Public Notice* to determine which licenses will be offered.

B. Rules and Disclaimers

i. Relevant Authority

11. Prospective applicants must familiarize themselves thoroughly with the Commission's rules relating to broadband PCS, contained in Title 47, part 24, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''terms'') contained in the *Auction No. 58 Procedures Public Notice;* the *Auction No. 58 Comment Public Notice;* the *Auction No. 58 Revised Inventory Public Notice;* the *C/F Block Sixth Report and Order,* (as well as any other prior and subsequent Commission proceedings regarding competitive bidding procedures).

12. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

13. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

14. Applicants for licenses in any of the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

15. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

16. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65.

17. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 58 Procedures Public Notice*.

iii Due Diligence

18. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

19. Applicants are reminded that private and common carrier fixed microwave services (''FMS'') operating in the 1850–1990 MHz band (and other bands) are being relocated to available frequencies in higher bands or to other media. Applicants should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders, in order to make a reasoned, appropriate decision about their participation in Auction No. 58 and their bidding strategy.

20. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 58.

21. Applicants should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority (''STA''), waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 58. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 58. Applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

22. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 58. In addition, although the Commission may continue to act on various pending applications, informal objections petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction or by the time of license grant.

23. Applicants may obtain information about licenses available in Auction No. 58 through the Bureau's licensing databases on the World Wide Web at *http://wireless.fcc.gov/uls*. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the ''?'' button at the upper right-hand corner of the License Search screen. Applicants should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov*.

24. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Applicants are strongly encouraged to physically inspect any sites located in, or near, the service area(s) for which they plan to bid.

iv. Bidder Alerts

25. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 58 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 58 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225–5322).

v. National Environmental Policy Act Requirements

26. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (''NEPA''). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.

C. Auction Specifics

i. Auction Date

27. The auction will begin on Wednesday, January 26, 2005. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

28. Auction No. 58—Broadband PCS.

iii. Bidding Methodology

29. The bidding methodology for Auction No. 58 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

30. Listed are important dates associated with Auction No. 58:

Auction Seminar—November 1, 2004.

Short-Form Application (FCC Form 175) Filing Window Opens—November 16, 2004; 9 a.m. ET.

Short-Form Application (FCC Form 175) Filing Window Deadline—November 30, 2004; 6 p.m. ET.

Upfront Payments (via wire transfer)—December 29, 2004; 6 p.m. ET.

Mock Auction—January 21, 2005.

Auction Begins—January 26, 2005.

v. Requirements for Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, November 30, 2004.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, December 29, 2004.
- Comply with all provisions outlined in the *Auction No. 58 Procedures Public Notice* and applicable Commission rules.

vi. Any Filings Related to Auction No. 58

32. An electronic copy of any filings that are submitted to the Commission related to Auction No. 58, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address: *auction58@fcc.gov.*

vii. General Contact Information

33. The following is a list of general contact information relating to Auction 58.

General Auction Information: General Auction Questions, Seminar Registration

FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.—5:30 p.m. ET, Monday through Friday. Auction Legal Information:

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division, (202) 418–0660.

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues

Mobility Division, (202) 418–0620.

Technical Support: Electronic Filing, FCC Automated Auction System
FCC Auctions Technical Support Hotline, (202) 414–1250, (202) 414–1255 (TTY), Hours of service: 8 a.m.—6 p.m. ET, Monday through Friday.
Payment Information: Wire Transfers, Refunds
FCC Auctions Accounting Branch, (202) 418–0578, (202) 418–2843 (Fax).
Telephonic Bidding:
Will be furnished only to qualified bidders.
Press Information:
Lauren Patrich (202) 418–7944.
FCC Forms:
(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html.*
FCC Internet Sites:
http://www.fcc.gov, http://wireless.fcc.gov/auctions, http://wireless.fcc.gov/uls.

II. Short-Form (FCC Form 175) Application Requirements

34. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 58 Procedures Public Notice.* All applicants must certify on their FCC Form 175 applicants under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

35. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an ''Exhibit A'' providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

36. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.

37. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Eligibility for Closed Bidding (FCC Form 175 Exhibit C)

38. In order to be eligible to bid for one or more closed C block licenses, an applicant must demonstrate that it meets the eligibility requirements of § 24.709(a) of the Commission's rules. 47 CFR 24.709(a). Specifically, as of the FCC Form 175 filing deadline, the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have combined total assets of less than $500 million and must have had combined gross revenues of less than $125 million in each of the last two years. *Id.* Applicants should make this showing in ''Exhibit C'' to the FCC Form 175.

39. The majority of comments filed in response to the *Auction No. 58 Comment Public Notice* address the eligibility restrictions placed on the C block licenses, referred to as set-aside licenses, reserved to only entities that qualify as entrepreneurs. Some parties advocate a change in the current rules to allow all entities to bid on the set-aside licenses. On the other hand, a number of commenters oppose any change to the eligibility structure, and at least one party advocates a change in the current structure to increase the number of licenses limited to entrepreneurs. The requests made in comments filed to the *Auction No. 58 Comment Public Notice* to change the eligibility rules are beyond the scope of this public notice regarding the procedures for Auction No. 58. As noted above, the eligibility issue was also raised in a petition for rulemaking and a request for waiver filed by CTIA, and in the Verizon Wireless petition for reconsideration. Those petitions have been addressed separately.

40. Included in its Auction No. 58 comments, another commenter also seeks a waiver of the Commission's rules to extend the expired entrepreneur eligibility provisions of § 24.709(a)(5)(i) to allow it and other entities to participate in closed bidding in Auction No. 58. This matter has also been addressed separately.

ii. Bidding Credit Eligibility (FCC Form 175 Exhibit D)

41. Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 24.720(b)) that win C and F block licenses in open bidding. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

42. For Auction No. 58, bidding credits will be available to small businesses or consortia thereof, as follows:

- A bidder with attributable average annual gross revenues of not more than $40 million for the preceding three years (''small business'') will receive a 15 percent discount on its winning bids for C and F block licenses;
- A bidder with attributable average annual gross revenues of not more than $15 million for the preceding three years (''very small business'') will receive a 25 percent discount on its winning bids for C and F block licenses.

43. Small business bidding credits are not cumulative; a qualifying applicant receives the 15 percent or 25 percent bidding credit on its winning bid, but only one credit per license. No small and very small business bidding credits are provided for licenses in the A, E and D blocks or C block licenses available only to entrepreneurs in closed bidding.

44. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.E. of the *Auction No. 58 Procedures Public Notice.*

iii. Applicability of Part 1 Attribution Rules

45. *Controlling interest standard.* On August 14, 2000, the Commission released the Part 1 Fifth Report and Order, 65 FR 52323, August 29, 2000, in which the Commission, *inter alia,* adopted a ''controlling interest'' standard for attributing to auction applicants the total assets and/or gross revenues of their investors and affiliates in determining entrepreneur and small business eligibility for future C and F block auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. More recently, the Commission made further modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes included exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission also clarified that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant.

46. The Commission will thoroughly review the information provided in applicants' FCC Form 175 in determining eligibility for designated entity status. Eligibility for small business preferences will be determined based on the attribution rules in effect at the short-form application deadline. Accordingly, the ''controlling interest'' standard, as recently modified, and the Part 1 rules that superseded inconsistent service-specific rules, will apply in Auction No. 58.

47. *''Control'' for purposes of controlling interest standard.* The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock indicates *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

48. *Attribution for entrepreneur eligibility.* For purposes of determining which entities qualify as entrepreneurs for closed bidding, the Commission will consider the total assets and gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. The Commission does not impose specific equity requirements on parties with controlling interests. Once principals or entities with a controlling interest are determined, only the assets and revenues of those principals or entities, the applicant, and their affiliates will be counted in determining entrepreneur eligibility. Applicants for closed bidding in Auction No. 58 should not include existing C and F block licenses in their calculations of total assets; however, all other Commission licenses must be included in such calculations.

49. *Attribution for small business and very small business eligibility.* Similarly, in determining which entities qualify as small businesses or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates, will be counted in determining small business eligibility.

50. A consortium of small businesses or very small businesses is a ''conglomerate organization formed as a joint venture between or among mutually independent business firms,'' each of which individually must satisfy one of the definitions of small business or very small business in § 24.720(b) of the Commission's rules.

iv. Supporting Documentation

51. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneurs and/or small business or very small business (or consortia of small businesses or very small businesses) for this auction.

52. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

53. *Entrepreneur eligibility (Exhibit C).* Entities applying to bid on closed licenses will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, separately and in the *aggregate*, the gross revenues for the preceding two years and the total assets of each of the following: (i) The applicant, (ii) the applicant's affiliates, (iii) the applicant's controlling interest holders, and (iv) the affiliates of the applicant's controlling interest holders. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for each of the preceding two years.

54. *Small business or very small business eligibility (Exhibit D).* Entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on Exhibit D to their FCC Form 175 short-form applications, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit E)

55. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit E to the FCC Form 175.

56. ''Former defaulters''—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 58, provided that they are otherwise qualified. However, as discussed infra in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Transfer and Assignment Restrictions on Licenses Won in Closed Bidding

57. Licenses won in closed bidding generally may be transferred or assigned only to an entity that meets the entrepreneur financial caps or that holds another C or F block license that it acquired while meeting the entrepreneur financial caps. This restriction ends five years after the date of the initial license grant or upon notification by the licensee that it has satisfied its five-year construction requirement under 47 CFR 24.203(c), whichever comes first. Licenses won in open bidding are not subject to this restriction and may be transferred or assigned any time after grant to any qualified entity, subject to Commission consent.

F. Unjust Enrichment Payments

58. C or F block licensees that use a small or very small business bidding credit, and during the first five years of their license term seek to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a small or very small business bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit, plus interest.

G. Installment Payments

59. Installment payment plans will not be available in Auction No. 58.

H. Other Information (FCC Form 175 Exhibits F and G)

60. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit F) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit G.

J. Minor Modifications to Short-Form Applications (FCC Form 175)

61. After the short-form filing deadline (6 p.m. ET November 30, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: *auction58@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 58. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

K. Maintaining Current Information in Short-Form Applications (FCC Form 175)

62. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application. An electronic copy of any filings that are submitted to the Commission related to Auction No. 58, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address: *auctions58@fcc.gov*.

III. Pre-Auction Procedures

A. Auction Seminar

63. On Monday, November 1, 2004, the FCC will sponsor a seminar for Auction No. 58 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the broadband PCS rules.

64. For individuals who are unable to attend, Audio/Video of this seminar will be Web cast live from the FCC's Audio/Video Events page at *http://www.fcc.gov/realaudio/*. A recording of the Web cast will also be available for playback from the FCC's A/V Archives Page following the meeting.

B. Short-Form Application (FCC Form 175)—Due November 30, 2004

65. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on November 30, 2004. Late applications will not be accepted.

66. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* section III.D.

i. Electronic Filing

67. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at 9 a.m. ET on November 16, 2004, until 6 p.m. ET on November 30, 2004. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 30, 2004.

68. Applicants must press the ''SUBMIT Application'' button on the ''Submission'' page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 58 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

ii. Completion of the FCC Form 175

69. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 58 Procedures Public Notice*.

iii. Electronic Review of FCC Form 175

70. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. See Attachment C of the *Auction No. 58 Procedures Public Notice* for details on accessing the review system.

71. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

72. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due December 29, 2004

73. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on December 29, 2004. Failure to deliver the upfront payment by the December 29, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

74. Wire transfer payments must be received by 6 p.m. ET on December 29, 2004. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

75. Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 58.'' In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

ii. Amount of Upfront Payment

76. In the *Part 1 Order,* 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order,* the Commission ordered that ''former defaulters,'' *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-''former defaulters.'' For purposes of this calculation, the ''applicant'' includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

77. The amount of the upfront payment will determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

78. For Auction No. 58 the Commission adopts upfront payments on a license-by-license basis using a formula based on bandwidth and license area population: $0.05 * MHz * License Area Population.

79. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 58 Procedures Public Notice.*

80. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

81. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

82. The Commission will use wire transfers for all Auction No. 58 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has

been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418–2843 by December 29, 2004. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

E. Auction Registration

83. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

84. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

85. Qualified bidders that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified bidder that has not received both mailings by noon on Wednesday, January 5, 2005, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all of the registration material.

86. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

87. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 58. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

G. Mock Auction

88. All qualified bidders will be eligible to participate in a mock auction on Friday, January 21, 2005. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended.

IV. Auction Event

89. The first round of bidding for Auction No. 58 will begin on Wednesday, January 26, 2005. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

90. The Bureau will award all licenses in Auction No. 58 in a simultaneous multiple round auction. The Bureau concludes that it is operationally feasible and appropriate to auction the PCS licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

91. The amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.

92. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 58 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

93. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating.

94. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* ''Minimum Acceptable Bids and Bid Increments'' in section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under ''Auction Stages'' in section IV.A.iii and ''Stage Transitions'' in section IV.A.iv), we adopt them for Auction No. 58.

iii. Auction Stages

95. The Commission will conduct the auction in two stages and employ an activity rule. In each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Finally, in each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

96. The Bureau reserves the discretion to further alter the activity requirements

before and/or during the auction. We also note that the Bureau has other mechanisms by which it may influence the speed of an auction. When determining the bidding schedule, the Bureau takes into consideration the desirability of concluding the auction reasonably swiftly, and the Bureau also attempts to ensure that bidders have sufficient time for placing bids during rounds and for analysis between rounds. For Auction No. 58, the Bureau has already taken steps to adjust bid increments in a manner that should help speed the auction: the Bureau has proposed a maximum percentage increment of 0.3 (30%). This relatively high maximum percentage increment will allow licenses for which there is greater demand—*i.e.*, those receiving many bids—to rise in price faster than if a lower maximum percentage increment were used. Additionally, the minimum opening bids adopted by the Bureau should help to avoid a protracted auction.

97. The Commission adopts its proposals for the activity rules and stages. Listed are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by twenty-nineteenths (20/19).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

98. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 58.

iv. Stage Transitions

99. The auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau will retain the discretion to change stages unilaterally by announcement during the auction.

100. Thus, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission believes that these stage transition rules are appropriate for use in Auction No. 58.

v. Activity Rule Waivers and Reducing Eligibility

101. Each bidder in the auction will be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

102. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

103. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in ''Auction Stages'' (*see* section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

104. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

105. For Auction No. 58, the Bureau will employ a simultaneous stopping rule, and retain discretion to invoke a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder.

106. In addition, the Bureau reserves the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau may exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears

likely that the auction will not close within a reasonable period of time.

vii. Auction Delay, Suspension, or Cancellation

107. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

108. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

109. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

110. In establishing minimum opening bids for Auction No. 58, the Bureau adopts the following license-by license formulas based on bandwidth and license area population.

Population ≥ 2,000,000: $0.50 * MHz * License Area Population.

Population ≥ 500,000: $0.25 * MHz * License Area Population.

Population < 500,000: $0.15 * MHz * License Area Population.

111. The Bureau adopts the minimum opening bids proposed in the *Auction No. 58 Comment Public Notice and the Auction No. 58 Revised Inventory Public Notice.* By comparing the minimum opening bids proposed in Auction No. 58 only to those of Auction No. 35, commenters have not adequately substantiated their argument that the minimum opening bids are excessive. On average, for the licenses for spectrum that was available in Auction No. 35, the Auction No. 58 minimum opening bids are significantly lower than the net amount of winning bids from Auction No. 35.

112. The minimum opening bids we adopt for Auction No. 58 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

113. The specific minimum opening bids for each license available in Auction No. 58 are set forth in Attachment A of the *Auction No. 58 Procedures Public Notice.*

iii. Minimum Acceptable Bids and Bid Increments

114. In Auction No. 58 we will use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 58 Procedures Public Notice.* We will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.3 (30%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 30% depending upon the number of bids for the license. The Bureau will retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

115. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

116. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 58 Procedures Public Notice.* The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) − (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, *etc.*).

117. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F of the *Auction No. 58 Procedures Public Notice,* and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid) (1 + percentage increment) {rounded} − (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, *etc*).

118. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

119. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau

may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

120. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' A ''standing high bid'' will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids are counted as activity for purposes of the activity rule.

121. In the event of identical high bids on a license in a given round (*i.e.*, tied bids) a Sybase® SQL pseudo-random number generator will be used to assign a random number to each bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

122. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

123. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a bid submission).

124. A bidder's ability to bid on specific licenses in the first round of the auction is determined by three factors: (i) The licenses applied for on FCC Form 175 and (ii) the eligibility restrictions on those licenses, if any, and (iii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

125. In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

126. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information.

127. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

128. For Auction No. 58 the Commission adopts bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission will limit each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used would be at the bidder's discretion.

129. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction.

130. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

131. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

132. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

133. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

134. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 58 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

135. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

136. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

137. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 58 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payments

138. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

139. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 58.

D. Ownership Disclosure Information Report (FCC Form 602)

140. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112.

E. Tribal Land Bidding Credit

141. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition, and separate from, any other bidding credit for which a winning bidder may qualifiy.

F. Default and Disqualification

142. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

143. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 58 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

144. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

145. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 04–24118 Filed 10–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed

into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer – Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.

Agency form number: Reg H–3.

OMB Control number: 7100–0196.

Frequency: Development of policy statement, one time; Trust company report, quarterly; Transactions recordkeeping, on occasion; and Disclosure, on occasion.

Reporters: State member banks and trust companies.

Annual reporting hours: 158,327

Estimated average hours per response: Development of policy statement, 30 minutes; Trust company report, 15 minutes; Transaction recordkeeping, 3 minutes; and Disclosure, 3 minutes.

Number of respondents: 1,286

General description of report: This information collection is mandatory (12 U.S.C. § 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. §§ 552(b)(4), (b)(6), and (b)(8)).

Abstract: State–chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary to protect the customer, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti–fraud and insider trading provisions of the Securities Exchange Act of 1934.

Board of Governors of the Federal Reserve System, October 22, 2004.

Robert deV. Frierson

Deputy Secretary of the Board.

[FR Doc. 04–24108 Filed 10–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. M.L. Smith Revocable Trust, Brookfield, Missouri; Mark L. Smith, trustee; the Ann E. Smith Revocable Trust and the Ann E. Smith Residuary Trust, both in Brookfield, Missouri; Ann E. Smith, trustee; and Michael R. Smith, Perry, Iowa; to retain voting shares of First Missouri Bancshares, Inc., and thereby indirectly retain voting shares of First Missouri National Bank, both in Brookfield, Missouri.

Board of Governors of the Federal Reserve System, October 25, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24140 Filed 10–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Nashua Bancshares, Inc., Saint Paul, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank (in organization), Nashua, Iowa, and thereby indirectly acquire voting shares of First State Bank (in organization), Nashua, Iowa.

2. FNSB Bancorp, Inc., Nashua, Iowa; to become a bank holding company by acquiring 35 percent of the boting shares of Nashua Bancshares, Inc., Saint Paul, Minnesota, and thereby indirectly acquire voting shares of First State Bank (in organization), Nashua, Iowa.

3. Readlyn Bancshares, Inc., St. Paul, Minnesota; to acquire 20 percent; Britt Bancshares, Inc., St. Paul, Minnesota, to acquire 15 percent; Tripoli Bancshares, Inc., St. Paul, Minnesota, to acquire 15 percent; Ashton Bancshares, Inc., St. Paul, Minnesota, to acquire 15 percent; of the voting shares of Nashua Bancshares, Inc., St. Paul, Minnesota, and thereby indirectly acquire voting shares of First State Bank (in organization), Nashua, Iowa.

Board of Governors of the Federal Reserve System, October 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24110 Filed 10–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire 100 percent of the voting shares of Capitol Development Bancorp Limited I, Lansing, Michigan, and thereby indirectly control Bank of Michigan (in organization), Farmington Hills, Michigan.

In connection with this application, Capitol Development Bancorp Limited I, Lansing, Michigan, has applied to become a bank holding company by acquiring 51 percent of the voting shares of Bank of Michigan (in organization), Farmington, Hills, Michigan.

Board of Governors of the Federal Reserve System, October 25, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24139 Filed 10–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 12, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; through is subsidiary, Metavante Corporation, to acquire VECTOEsgi Holdings, Inc., Addison, Texas, and thereby indirectly acquire VECTORsgi, Inc., Addison, Texas, and thereby engage in data processing and management consulting activities, pursuant to sections 225.28(b)(14)(i) and (b)(9)(i)(A)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–24109 Filed 10–27–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

OMB Control No. 3090–0080

General Services Administration Acquisition Regulation; Information Collection; Contract Financing

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding contract financing.

Public comments are particularly invited on: Whether this collection of information is necessary 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; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Office of the Deputy Chief Acquisition Officer, at telephone (202) 208–3810 or via e-mail to jerry.olson@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (V), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB No. 3090–0080, Contract Financing, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.232–79 requires building services contractors to submit a release of claims before final payment is made. GSA Form 1142, Release of Claims, is the vehicle for this release and standardizes information that

eliminates the necessity for contractors to prepare their own release of claims.

B. Annual Reporting Burden

Respondents: 2000
Responses Per Respondent: 1
Hours Per Response: .1
Total Burden Hours: 200
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VR), 1800 F Street, NW., Room 4035, Washington, DC 20405,telephone (202) 208–7312. Please cite OMB Control No.3090–0080, Contract Financing, in all correspondence.

Dated: October 22, 2004

Laura Auletta

DirectorContract Policy Division

[FR Doc. 04–24075 Filed 10–27–04; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Revised Privacy Act System of Records

AGENCY: General Services Administration

ACTION: Final notice of a revised Privacy Act system of records

SUMMARY: The General Services Administration (GSA) is publishing a final notice of a revision to the system of records, Emergency Management Records (GSA/HRO–9). This final notice clarifies the routine use that allows disclosure of system of records information in the settling of a grievance, complaint, or appeal filed by an employee only to authorized officials to ensure that system information is fully protected. No other changes are being made to the original revision, published on September 13, 2004. That revision proposed to cover under the Privacy Act, in addition to existing emergency notification records and files, electronic files and databases containing personal information needed to contact GSA associates and other essential persons at work, at home, and out of the area in times of emergency. The purpose of the revised system is to ensure an up-to-date communication capability by GSA nationwide, and facilitate continuity of critical GSA missions and functions in emergency situations. The system covers all GSA associates and contractor employees, as well as key governmental and non-governmental persons essential to carrying out emergency functions.

DATES: The revised system notice is effective on the date of publication.

FOR FURTHER INFORMATION CONTACT: GSA Privacy Act Officer, Office of Information Management (CI), General Services Administration, 1800 F Street NW, Washington DC 20405; telephone (202) 501–1452.

Dated: October 15, 2004.

June V. Huber,

Director, Office of Information Management, Office of the Chief People Officer.

GSA/HRO–9

System name: Emergency Management Records (GSA/HRO–9).

System location: The system is the responsibility of the GSA Office of Emergency Management, located at 1800 F Street NW, Washington DC 20405. System records are located in the GSA Central Office and regional offices with assigned emergency management responsibilities.

Categories of individuals covered by the system: All GSA associates, contractor employees, and other key governmental and non-governmental persons essential to carrying out emergency activities or with a need to know of actions taken by GSA in an emergency.

Categories of records in the system: The records, composed of emergency notification rosters and files, may consist of paper records and/or electronic databases, including the Emergency Management Information Database (EMID), the Quick Notify database, and continuity of operations (COOP) files. The data may be consolidated into a centralized emergency contact database to expedite communication. Personal information in the system records includes name; office, cell, and home telephone numbers; out-of-area contact telephone numbers; home address: home e-mail address; and home fax number. System records also may include special needs information such as medical, mobility, and transportation requirements by individuals. Additional information may include official titles and emergency assignments for individuals in the system.

Authority for maintaining the system: The Federal Property and Administrative Services Act of 1949, as amended 40 U.S.C. §§ 101 *et seq.*; E.O. Order 12565, Assignment of Emergency Preparedness Responsibilities; and Presidential Decision Directive 67, Ensuring Constitutional Government and Continuity of Government Operations.

Purpose: To maintain current information on GSA associates and other persons covered by this system for use by persons with emergency management responsibilities to notify officials, employees, and other affected individuals of conditions that require their urgent attention during a public or personal emergency.

Routine uses of records maintained in the system, including types of users and purposes of such uses:

System information may be used by authorized individuals in the performance of duties associated with their emergency management responsibilities. Routine uses are:

a. To disclose needed information to a Federal, State, or local agency investigating, prosecuting, or enforcing a statute, rule, regulation, or order, where GSA becomes aware of a possible violation of civil or criminal law or regulation.

b. To disclose information to a Member of Congress or a congressional staff member at the request of the individual who is the subject of the record.

c. To disclose information to another Federal agency or to a court where the Government is a party to a judicial proceeding before the court.

d. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an associate, issuing a security clearance, conducting a security or suitability investigation, classifying a job, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is necessary to the agency's decision on the matter.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; or other authorized official engaged in investigating or adjudicating a grievance, complaint, or appeal.

f. To disclose information to the Office of Personnel Management (OPM) and the Government Accountability Office (GAO) when the information is required for evaluation of program activities.

g. To disclose information to the National Archives and Records Administration (NARA) for records management purposes.

h. To disclose information to an expert, consultant, or contractor in the performance of a Federal government duty to which the information is relevant.

Policies and practices for storing, accessing, retrieving, retaining, and disposing of records in the system:

Storage: System records may be stored on paper or electronically in secure locations or computer systems.

Retrievability: Records may be retrieved by name, organization, location, teleworking capability, or special medical or other health or safety need of an individual.

Safeguards: When not in use by an authorized person, the records are secured from unauthorized access. Paper records are placed in lockable file cabinets or in secured areas. Electronic records are protected by passwords, access codes, and other appropriate technical security measures.

Retention and disposal: Disposal of system records is according to the Handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2A), and the requirements of the National Archives and Records Administration.

System manager(s) and address: The official with overall responsibility for the system of records is the Director, Office of Emergency Management (ACE), 1800 F Street NW, Washington DC 20405. GSA Services, Staff Offices, and regions are responsible for the integrity of data within their jurisdictions.

Notification procedure: Individuals may determine whether the system contains their records by submitting a request to the System Manager or the appropriate Service, Staff Office, or regional official.

Record access procedures: An individual may obtain information on the procedures for gaining access to their records from the System Manager or the appropriate Service, Staff Office, or regional official.

Procedures for contesting records: Individuals wishing to request amendment of their records should contact the System Manager or the appropriate Service, Staff Office, or regional official.

Record sources: The records contain information provided by the individuals themselves, their supervisors, or their Service, Staff Office, or region.

[FR Doc. 04–24071 Filed 10–27–04; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding ''Technical, Analytical and Logistical Support for the Office of Extramural Research, Education and Priority Populations''. The RFP was published in the Federal Business Opportunities on June 16, 2004.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, FACA regulations 41 CFR 101–6.1023 and procurement regulations, 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—''Technical, Analytical and Logistical Support for the Office of Extramural Research, Education and Priority Populations''.

Date: November 8, 2004 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 540 Gaither Road, Conference Center, Rockville, Maryland, 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Bonnie Campbell, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, 301–427–1554.

Dated: October 15, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–24091 Filed 10–27–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10113]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of currently approved collection; Title of Information Collection: Application for Participation in Medicare Replacement Drug Demonstration; *Use:* Section 641 of the MMA mandated a demonstration that would pay for drugs/biologicals prescribed as replacements for existing covered Medicare drugs. A report to Congress evaluating the impact of this demonstration was also mandated. In order to enroll in this demonstration, a beneficiary will be required to submit the application forms. Beneficiaries who wish to be considered for a low-income subsidy must also provide the information on the ''Application for Financial Assistance''; *Form Number:* CMS–10113 (OMB#: 0938–0924); *Frequency:* Other: Once per beneficiary; *Affected Public:* Individuals or Households; *Number of Respondents:* 50,000; Total Annual Responses: 50,000; *Total Annual Hours:* 20,417.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/*

regulations/pra/, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 21, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–24077 Filed 10–27–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Computerized Support Enforcement Systems.

OMB No.: 0980–0271.

Description: The information being collected is mandated by section 454(16) of the Social Security Act (the Act), which provides for the establishment and operation by the state agency, in accordance with an initial and annually updated Advance Planning Document (APD) approved under section 452(d) of the Act, of a statewide system meeting the requirements of section 454A of the Act. In addition, 454A(e)(1) requires that states create a State Case Registry (SCR) within their statewide automated child support systems to include information on IV–D cases and non-IV–D orders established or modified in the state on or after October 1, 1998. Section 454A(e)(5) of the Act requires states to regularly update their cases in the SCR.

The data being collected for the ADP are a combination of narratives, budgets and schedules, which are used to provide funding approvals on an annual basis and to monitor and oversee system development. Child support has separate regulations under 45 CFR 307.15 related to submittal penalties for non-compliance with the statutory deadline of October 1, 2000. This information collection reflects the fact that 50 states and territories are now certified under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) leaving only four states that are not yet PRWORA systems certified, including one state that has not submitted an implementation APD for compliance with PRWORA automation. States and territories that opted to keep their Annual Planning Documents for child support systems are covered under a separate information collection, OMB No. 0992–0005, for 45 CFR part 95 subpart F.

The data being collected for the State Case Registry is used to transmit mandatory data elements to the Federal Case Registry (FCR) where it is used for matching against other data bases for the purposes of location of individuals, assets, employment and other child support related activities.

Respondents: The respondents are 54 state and territorial child support agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
307.15 (APD)	1	1	240	240
307.15 (APD Update)	4	1	60	240
307.11(e)(1)(ii) Collection of non-IV–D data for SCR states	54	25,200	.046	62,597
307.11(e)(1)(ii) Collection of non-IV–D data for SCR courts	3,045	447	.029	39,472
307.11(e)(3)(v) Collection of child data for IV–D cases for SCR courts	3,045	213	.083	53,833
307.11(f)(1) Case data transmitted from SCR to FCR new cases and case updates	54	52	2.82	7,918

Estimated Total Annual Burden Hours: 164,300.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov*.

Dated: October 20, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–24073 Filed 10–27–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0456]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Health Care Facilities; Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that a collection of information entitled ''Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Health Care Facilities; Survey'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 2004 (69 FR 35379), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0548. The approval expires on March 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24113 Filed 10–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Reproductive Health Drugs; 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: Advisory Committee for Reproductive Health Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 2, 2004, from 8 a.m. to 5:30 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Teresa Watkins, 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: *watkinst@cder.fda.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512537. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–769, Testosterone Transdermal System (proposed tradename, Intrinsa) by Procter and Gamble, indicated for the treatment of hypoactive sexual desire disorder in surgically menopausal women receiving concomitant estrogen therapy. Background materials for this meeting when available will be posted on the Internet 1 business day before the meeting at: *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

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 November 17, 2004. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 17, 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 Teresa Watkins 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 21, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–24068 Filed 10–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D–0584]

''Guidance for Industry: Use of Nucleic Acid Tests on Pooled and Individual Samples From Donors of Whole Blood and Blood Components (Including Source Plasma and Source Leukocytes) to Adequately and Appropriately Reduce the Risk of Transmission of Human Immunodeficiency Virus Type 1 and Hepatitis C Virus;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Use of Nucleic Acid Tests on Pooled and Individual Samples From Donors of Whole Blood and Blood Components (Including Source Plasma and Source Leukocytes) to Adequately and Appropriately Reduce the Risk of Transmission of HIV–1 and HCV,'' dated October 2004. The guidance provides recommendations to all establishments that manufacture Whole Blood and blood components (including Source Plasma and Source Leukocytes) on the implementation of licensed nucleic acid tests (NAT) to identify human immunodeficiency virus type 1 (HIV–1) ribonucleic acid (RNA), and hepatitis C virus (HCV) RNA in donations of Whole Blood and blood components to reduce the risk of transmission of these agents; and the reporting to FDA of such implementation. The guidance announced in this notice finalizes the draft guidances entitled ''Use of Nucleic Acid Tests on Pooled Samples From Source Plasma Donors to Adequately and Appropriately Reduce the Risk of Transmission of HIV–1 and HCV,'' dated December 2001 and ''Use of Nucleic Tests on Pooled and Individual Samples From Donors of Whole Blood and Blood Components for Transfusion to Adequately and Appropriately Reduce the Risk of Transmission of HIV–1 and HCV,'' dated March 2002.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug

Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Use of Nucleic Acid Tests on Pooled and Individual Samples From Donors of Whole Blood and Blood Components to Adequately and Appropriately Reduce the Risk of Transmission of HIV–1 and HCV,'' dated October 2004. FDA's final rule (66 FR 31146, June 11, 2001) entitled ''Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Diseases'' became effective on December 10, 2001. The regulations under § 610.40(b) (21 CFR 610.40(b)) require that establishments that collect or manufacture Whole Blood and blood components ''must perform one or more screening tests to adequately and appropriately reduce the risk of transmission of communicable disease agents'' (66 FR 31146 at 31162). As we noted in the preamble to the final rule, the standard for adequate and appropriate testing will change as new testing technology is approved by FDA. We explained, ''* * * we intend to regularly issue guidance describing those tests that we believe would adequately and appropriately reduce the risk of transmission of communicable disease agents'' (66 FR 31146 at 31149).

The guidance announced in this notice finalizes the draft guidances entitled ''Use of Nucleic Acid Tests on Pooled Samples From Source Plasma Donors to Adequately and Appropriately Reduce the Risk of Transmission of HIV–1 and HCV,'' dated December 2001, and ''Use of Nucleic Tests on Pooled and Individual Samples From Donors of Whole Blood and Blood Components for Transfusion to Adequately and Appropriately Reduce the Risk of Transmission of HIV–1 and HCV,'' dated March 2002. This guidance recommends that establishments implement these recommendations as soon as feasible, but not later than 6 months after publication of this notice.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 601.12 and § 610.40 of this guidance were approved under OMB control numbers 0910–0315 and 0910–0472.

III. Comments

Interested persons may, at any time, submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 20, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24067 Filed 10–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0462]

Draft Guidance for Industry: Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Blood Cell Substitutes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry entitled Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Blood Cell Substitutes'' dated October 2004. The draft guidance provides sponsors or investigators, with criteria for testing the efficacy and safety of oxygen therapeutics as substitutes for red blood cells, and guidance on the design of clinical trials to assess risk/benefit ratio of such use. The draft guidance, when finalized, would supercede the ''Points to Consider on the Safety Evaluation of Hemoglobin-Based Oxygen Carriers,'' dated August 27, 1990, and replaces the draft ''Guidance for Industry: Efficacy Evaluation of Hemoglobin- and Perfluorocarbon-Based Oxygen Carriers'' dated September 1997.

DATES: Submit written or electronic comments on the draft guidance by January 26, 2005 to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics

Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry entitled Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Blood Cell Substitutes'' dated October 2004. The draft guidance, when finalized, would supercede the ''Points to Consider on the Safety Evaluation of Hemoglobin-Based Oxygen Carriers,'' dated August 27, 1990, and replaces the draft ''Guidance for Industry: Efficacy Evaluation of Hemoglobin- and Perfluorocarbon-Based Oxygen Carriers'' dated September 1997. The draft guidance provides you, as a sponsor or investigator, with criteria for testing the efficacy and safety of oxygen therapeutics as substitutes for red blood cells, and guidance on the design of clinical trials to assess risk/benefit ratio of such use. While the draft guidance is restricted to use of oxygen therapeutics as substitutes for red blood cells, this may not be the only indication being evaluated for these investigational new drugs. The draft guidance should not discourage innovation in the development of appropriate endpoints for and the design of clinical trials for other uses of oxygen therapeutics.

The draft guidance was revised based on, in part, presentations and discussions obtained at a workshop entitled ''Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Cell Substitutes'' held on September 27 and 28, 1999, and public comments received on the September 1997 draft guidance. The workshop was sponsored by CBER, FDA, and co-sponsored by the National Heart, Lung, and Blood Institute, National Institute of Health, the Department of Defense, U.S. Army Medical and Material Command, and the Armed Services Blood Program Office.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 20, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24066 Filed 10–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: November 17, 2004, 9 a.m. to 5 p.m.; November 18, 2004, 9 a.m. to 5 p.m.

Place: Adam's Mark Denver, 1550 Court Place, Denver, Colorado 80202, Phone: (800) 444–2326; Fax: (303) 626–2544.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of the Council's general business activities. In addition, the Council will hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national level.

The Council meeting is being held in conjunction with the 14th Annual Midwest Farmworker Stream Forum sponsored by the National Center for Farmworker Health, Inc., which is being held in Denver, Colorado, during the same period of time.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0367.

Dated: October 20, 2004.

Steven A. Pelovitz,

Associate Administrator, Office of Administration and Financial Management.

[FR Doc. 04–24069 Filed 10–27–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 commerical 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 3.

Date: November 2, 2004.

Time: 3:30 a.m. to 5:30 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.*

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: National Institute of Mental Health Special Emphasis Panel Advanced Centers for MH Disparities Research (SEP II).

Date: November 30, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennyslyvania Ave., NW., Washington, DC 20037.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Advanced Centers for MH Disparities Research (SEP I).

Date: December 30, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Marks Center, 5000 Seminary Road, Alexandria, VA 22314.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Services Conflicts 2.

Date: December 3, 2004.

Time: 3 p.m. to 5 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 Domestic 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 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24085 Filed 10–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Renal Allograft Dysfunction.

Date: November 15, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Developmental Regulation of Bone Morphogenesis.

Date: November 16, 2004.

Time: 7:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *edwardsm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limiations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Osteoporosis and Vascular Calcification in ESRD.

Date: November 23, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38oz@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Pantel Immunogenetics.

Date: November 23, 2004.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel GI Endocrinology.

Date: December 1, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24086 Filed 10–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below

in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: November 29–December 1, 2004.

Open: November 29, 2004, 6 p.m. to 6:30 p.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: November 29, 2004, 6:30 p.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: November 30, 2004, 8 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: December 1, 2004, 8 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Contact Person: Marvin C Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, Bethesda, MD 20892, (301) 496–4129.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; National Institutes of Health, HHS)

Dated: October 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24087 Filed 10–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR), Announces Availability of Draft Expert Panel Reports on Amphetamines and Methylphenidate and Expert Panel Meeting; Requests Public Comments on the Draft Reports

Summary

The NTP CERHR announces:

(1) The availability of sections 1–4 of the draft expert panel reports for amphetamines and methylphenidate on November 15, 2004. Written public comments on the draft report must be received by December 29, 2004.

(2) The expert panel meeting for amphetamines and methylphenidate will be held on January 10–12, 2005, at the Holiday Inn Old Town Select Alexandria, Virginia. The public is invited to present oral comments at this meeting.

Questions and public comments should be directed to Dr. Michael Shelby, CERHR Director (contact information below).

Draft Expert Panel Reports on Amphetamines and Methylphenidate Available

The CERHR announces the availability of the draft expert panel reports on amphetamines and methylphenidate on November 15, 2004 on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in printed text from the CERHR (contact information below). Amphetamines and methamphetamine are central nervous system stimulants. Amphetamine is indicated for the treatment of narcolepsy and attention deficit hyperactivity disorder (ADHD), and methamphetamine is indicated for the treatment of ADHD and for short-term treatment of obesity. These chemicals are available for pharmaceutical use as various salts and enantiomer preparations. The most common proprietary amphetamine preparation is Adderall®, a mixture of d- and l-amphetamine salts in a 3:1 ratio. d-Methamphetamine is used in pharmaceutical preparations in the United States and is also manufactured and used as an illicit drug. Methylphenidate (CAS RN 298–59–9) is a central nervous system stimulant approved by the Food and Drug Administration for the treatment of ADHD and narcolepsy in persons six years and older. d, l-Methylphenidate is marketed under the names Ritalin®, Metadate®, Methylin®, and Concerta®. The d-enantiomer is marketed under the name Focalin™. The CERHR selected amphetamines and methylphenidate for expert panel evaluation because of widespread usage in children, availability of developmental studies in children and experimental animals, and public concern about the effects of these stimulants on child development.

Each draft expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be prepared at expert panel meeting)

Sections 1–4 will be available to the public by the November 15th in PDF format on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in hard copy or as a PDF file on compact disk by contacting Dr. Michael Shelby, Director CERHR [NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, PO Box 12233, MD EC–32, Research Triangle Park, NC 27709, telephone: (919) 541–3455; facsimile: (919) 316–4511; *shelby@niehs.nih.gov*].

Request for Written Comments on Draft Expert Panel Report

The CERHR (invites written public comments on sections 1–4 of the draft expert panel reports on amphetamines and methylphenidate. Comments can be submitted in hard copy or electronic format and must be received by the CERHR on or before December 29, 2004. Any comments received by this date will be posted on the CERHR Web site prior to the meeting and distributed to the expert panel and CERHR staff for their consideration in revising the draft reports and in preparing for the expert panel meeting. Written comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any).

Expert Panel Meeting Planned

The CERHR will hold an expert panel meeting January 10–12, 2005, at the Holiday Inn Old Town Select 480 King Street, Alexandria, VA 22314 (telephone: 703–549–6080, facsimile: 703–684–6508). The expert panel will review the scientific evidence regarding

the potential reproductive and/or developmental toxicity associated with exposure to amphetamines and methylphenidate. The expert panel will review and revise the draft expert panel report and reach conclusions regarding whether exposure to amphetamines and/or methylphenidate is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs.

This meeting is open to the public and attendance is limited only by the available meeting room space. The meeting will begin at 8:30 a.m. each day. On January 10 and 11, it is anticipated that a lunch break will occur from noon–1 p.m. and the meeting will adjourn 5–6 p.m. The meeting is expected to adjourn by noon on January 12; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below. Following the expert panel meeting and completion of the expert panel report, the CERHR will post the report on its web site and solicit public comment on it through a **Federal Register** notice.

Preliminary Meeting Agenda

Meeting begins at 8:30 am each day
Lunch break anticipated from noon–1 p.m.

January 10, 2005

Opening remarks
Oral public comments (7 minutes per speaker; one representative per group, see below)
Review of sections 1–4 of the draft expert panel reports on amphetamines and methylphenidate
Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

January 11, 2005

Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs
Preparation of draft summaries and conclusion statements

January 12, 2005

Presentation, discussion of, and agreement on summaries and conclusions
Closing comments

Oral Public Comments Welcome at Expert Panel Meeting

Time is set-aside on January 10, 2005, for the presentation of oral public comments at the expert panel meeting. To facilitate planning, those persons wishing to make oral public comments are asked to contact Dr. Shelby by January 5 (contact information provided above). Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, email and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to Dr. Shelby by January 5. This statement will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on January 10, 2005 from 7:30–8:30 a.m. Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points for distribution to the expert panel and for the record.

Amphetamines and Methylphenidate Expert Panel

The CERHR expert panel is composed of independent scientists selected for their scientific expertise in reproductive and/or developmental toxicology and other areas of science relevant for this review.

Expert Panel Members and Affiliation

Mari S. Golub, Ph.D., Chair, University of California, Davis, CA
Lucio G. Costa, Ph.D., University of Washington, Seattle, WA
Kevin M. Crofton, Ph.D., U.S. Environmental Protection Agency Research, Triangle Park, NC
Deborah A. Frank, M.D., Boston Medical Center, Boston, MA
Peter A. Fried, Ph.D., Carleton University, Ottawa, Ontario, Canada
Beth C. Gladen, Ph.D., National Institute of Environmental Health Sciences Research, Triangle Park, NC
Rogene F. Henderson, Ph.D., Lovelace Respiratory Research Institute, Albuquerque, NM
Erica L. Liebelt, M.D., University of Alabama School of Medicine, Birmingham, AL
Shari I. Lusskin, M.D., New York University School of Medicine, New York, NY
M. Sue (Pahl) Marty, Ph.D., The Dow Chemical Company, Midland, MI
Andrew S. Rowland, Ph.D., University of New Mexico, Albuquerque, NM
John Vincent Scialli, M.D., Consultant & Private Practice, Phoenix, AZ
Mary Vore, Ph.D., University of Kentucky, Lexington, KY

Background Information About the CERHR

The NTP established the NTP CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR web site under ''About CERHR'' or in printed copy from the CERHR.

Dated: October 18, 2004.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–24088 Filed 10–27–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

U.S. Fire Administration Policy and Program Advisory Board

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

ACTION: Committee management: Notice of committee establishment.

SUMMARY: The Secretary of the Department of Homeland Security has determined that the establishment of the U.S. Fire Administration Policy and Program Advisory Board is necessary and in the public interest in connection with the performance of duties of the Under Secretary of the Emergency Preparedness and Response Directorate. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: U.S. Fire Administration Policy and Program Advisory Board.

Purpose and Objectives: The Committee advises the Secretary of the Department of Homeland Security and the Under Secretary of the Emergency Preparedness and Response Directorate.

The Board will provide advice and recommendations on policy and program issues as identified by the U.S. Fire Administrator (USFA) with the goal of reducing the Nation's fire problem and enhancing emergency management training and program policies, processes and procedures through enhanced research, programs and training to assure the nation's resources are better prepared to prevent, mitigate, respond to and recover from major emergencies or disasters regardless of cause or magnitude.

USFA will create Subcommittees that will be necessary to fulfill the Board's mission. In addition, USFA and the Board will establish such operating procedures as required to support the group, consistent with the Federal Advisory Committee Act, as amended.

Balanced Membership Plans: The Committee shall be comprised of nine members. The Secretary shall appoint the members of the Board from among professionals in the fields of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management, and from such professional organizations as will ensure a balanced representation of fire and emergency services interests. Members will be appointed as Special Government Employees (SGEs). Members of the Board shall be appointed for terms of up to two (2) years, and members may be reappointed to two subsequent 2-year terms at the discretion of the Secretary. Board members will continue to serve until their replacement is appointed. In the event of a vacancy on the Board, the Secretary may select an alternate member or other individual to serve the unexpired term as described in the appointment letter. In order to provide for continuity of member participation, terms are staggered. No more than half of the members shall be replaced (or reappointed) in any given year unless there are vacancies for reasons other than term expiration.

Duration: The Board will terminate 2 years from the date of the charter filing, unless earlier renewed.

Responsible DHS Official: Mr. R. David Paulison, U.S. Fire Administrator, 16825 South Seton Avenue, Emmitsburg, MD 21727.

Dated: October 22, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24124 Filed 10–27–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4904–N11]

Notice of Proposed Information Collection: Comment Request, Third Round Designation of Seven Urban Empowerment Zones

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Judith Mize, (202) 709–6339 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Third Round Designation of Seven Urban Empowerment Zones.

OMB Control Number, if applicable: 2506–0148.

Description of the Need for the Information and Proposed Use: The statutes require HUD to review periodically the progress of designated urban communities (Rounds I, II and III) in carrying out their implementation programs and achieving the goals of their strategic plans.

Agency Form Numbers, if applicable: N/A.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response.

Burden type	Respondents	Est. hrs.	Total hrs.
Annual Reports:			
Round 1 & ECs	57	38	2,166
Round 2	15	45	675
Round 3	8	45	360
Response to a Letter of Warning	2	3	6
Totals	82	131	3,207

An estimation of the total number of hours needed to prepare the information collection is 3,207, number of respondents is 82, frequency of response is 3, and the hours per response on an average is 39.

Status of the Proposed Information Collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 22, 2004.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 04–24092 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4904–N–12]

Notice of Proposed Information Collection: Comment Request; Designation of Round III Empowerment Zones and Renewal Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Judith Mize at (202) 708–6339, ext 4167 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Designation of Round III Empowerment Zones and Renewal Communities.

OMB Control Number if applicable: 2506–0173.

Description of the need for the information and proposed use: The statutes require HUD to review periodically the progress of designated Renewal Communities in carrying out their implementation programs and achieving the goals of their strategic plans.

Agency form numbers, if applicable: N/A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response. An estimation of the total number of hours needed to prepare the information collection is 2,080 hours, number of respondents is 40, the frequency of response is 3, and the hours per response on an average is 52.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 22, 2004.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 04–24093 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–85]

Notice of Submission of Proposed Information Collection to OMB; Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to continue a currently approved information collection. Information provided by the grant recipients is used to document regulatory compliance with the National Environmental Policy Act (NEPA) and related environmental statutes. Recipients maintain records, which serve to allow the use of grant funds or financial assistance already awarded under 24 CFR part 58.

DATES: *Comments Due Date:* November 29, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0087) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of

information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities.

OMB Approval Number: 2506–0087.

Form Numbers: HUD–7015.15.

Description of the Need for the Information and Its Proposed Use: This is a request for approval to continue a currently approved information collection. Information provided by the grant recipients is used to document regulatory compliance with the National Environmental Policy Act (NEPA) and related environmental statutes. Recipients maintain records, which serve to allow the use of grant funds or financial assistance already awarded under 24 CFR part 58.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	18785	1		0.6		11,271

Total Estimated Burden Hours: 11,271.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 21, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2878 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–86]

Notice of Submission of Proposed Information Collection to OMB; Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to continue to collect the subject information. Public and Indian Housing Agencies submit this information in budget submissions from which HUD Field Offices calculate and obligate operating subsidies. The collection is revised to eliminate one form through automation.

DATES: *Comments Due Date:* November 29, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0029) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection.

OMB Approval Number: 2577–0029.

Form Numbers: HUD–52720–A, HUD–52720–B, HUD–52720–C, HUD–52722–A, HUD–52722–B, HUD–52723, and HUD–53087.

Description of the Need for the Information and Its Proposed Use: Public and Indian Housing Agencies submit this information in budget submissions from which HUD Field Offices calculate and obligate operating subsidies. The collection is revised to eliminate one form through automation.

Frequency Of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3,200	9,917		1.81		17,978

Total Estimated Burden Hours: 17,978.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2879 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903-N–87]

Notice of Submission of Proposed Information Collection to OMB; Mortgage Seekers Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to collect the subject information. This survey is designed to measure the experience of Americans, especially minorities, who have recently sought a mortgage.

DATES: *Comments Due Date:* November 29, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528-Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgage Seekers Survey.

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of The Need For The Information And Its Proposed Use: This is a request for approval to continue to collect the subject information. This survey is designed to measure the experience of Americans, especially minorities, who have recently sought a mortgage.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hour per response	=	Burden hours
Reporting burden	9,499	1		0.08		773

Total Estimated Burden Hours: 773.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2004.

Donna Eden,

Director, Investments Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. E4–2902 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–88]

Notice of Submission of Proposed Information Collection to OMB; Section 8 Random Digital Dialing Fair Market Rent Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to continue to collect the subject information. The information is used to determine Section 8 Fair Market Rents (FMR) in areas not covered by the AHS or CPI surveys.

DATES: *Comments Due Date:* November 29, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0142) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a

toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 8 Random Digital Dialing Fair Market Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This is a request for approval to continue to collect the subject information. The information is used to determine Section 8 Fair Market Rents (FMR) in areas not covered by the AHS or CPI surveys.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	1,746,750	38,250		0.7		26,775

Total Estimated Burden Hours: 26,775.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2004.

Donna Eden,

Director, Investments Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. E4–2903 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910-N–22]

Notice of Proposed Information Collection for Public Comment; Admission to, and Occupancy of Public Housing: Admission and Tenant Selection Policies, Verification, Notification, Preference, Waiting List, Exemption of Police Officers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410–5000 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Admission to, and Occupancy of Public Housing: Admission and Tenant Selection Policies, Verification, Notification, Preference, Waiting List, Exemption of Police Officers..

OMB Control Number: 2577–0220.

Description of the need for the information and proposed use: The Statue requires HUD to ensure the low-income character of public housing projects and to assure that sound management practices will be followed in the operation of the project. Public Housing Agencies (PHAs) enter into an Annual Contribution Contract (ACC) with HUD to assist low-income tenants. HUD regulations, Part 960, provide policies and procedures for PHAs to administer the low-income public housing program for admission and occupancy. PHAs must develop and keep on file the admission and occupancy policies including the plan for eligibility of police officers, which is approved by HUD. PHA compliance will support the stature; HUD can ensure that the low-income character of the project and that sound management practices will be followed.

Agency form number, if applicable: Not applicable.

Members of affected public: Individual or households, State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
3,200		1		8		5,600

Total Estimated Burden Hours: 5,600.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 22, 2004.

William O. Russell,

Deputy Assistant Secretary for Public & Indian Housing.

[FR Doc. E4–2904 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910-N–23]

Notice of Proposed Information Collection for Public Comment; Procedure for Obtaining Certificates of Insurance for Capital Program Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410–5000 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Procedure for obtaining certificates of insurance for capital program projects.

OMB Control Number: 2577–0046.

Description of the need for the information and proposed use: Public Housing Agencies must obtain certificates of insurance from contractors and subcontractors before beginning work under either the development of a new low-income public housing projects or the modernization of an existing project. The certificates of insurance provide evidence that worker's compensation and general liability, automobile liability insurance are in force before and construction work is started.

Agency form number, if applicable: Not applicable.

Members of affected public: Business or other For-Profit, State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
3,000		4		.50		6,000

Estimation of total number of hours needed for record keeping: Number of respondents 3,000 × Frequency of Response 4 × Hours per Response .20 = 2,400.

Total Estimated Burden Hours: 8,400.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 25, 2004.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E4–2905 Filed 10–27–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Renewal of Trinity River Adaptive Management Working Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal.

SUMMARY: The Secretary of the Interior, after consultation with the General Services Administration, has renewed the Trinity River Adaptive Management Working Group (Working Group). The Working Group provides recommendations on all aspects of the implementation of the Trinity River Restoration Program and affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Mueller, Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825, 916–414–6464.

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). The Secretary of the Interior certifies that she has determined that the continuation of the Working Group is necessary and is in the public interest.

The Working Group conducts its operations in accordance with the

provisions of FACA. It reports to the Secretary of the Interior through the Trinity River Management Council and functions solely as an advisory body. The Working Group provides recommendations and advice to the Trinity Management Council on (1) the effectiveness of management actions in achieving restoration goals and alternative hypotheses for study, (2) the priority of restoration projects, (3) funding priorities, and (4) other program components.

The Secretary will appoint members who can effectively represent the varied interests associated with the Trinity River Restoration Program. Members will represent stakeholders, Federal and State agencies, and tribes. Members will be senior representatives of their respective constituent groups with knowledge of the Trinity River Restoration Program including the Adaptive Environmental Assessment and Management Program. The Secretary will appoint Working Group members based on nominations submitted by interested parties, including but not limited to Trinity County residents, recreational and commercial fishermen, commercial and recreational boaters, power utilities, water users, forestry, grazing/ranchers, public trust interests, tribal interests, and the general public.

The Working Group will meet at least two times per year. The Fish and Wildlife Service provides necessary support services to the Working Group. All Working Group meetings, as well as its subcommittee meetings, will be open to the public. A notice announcing each Working Group meeting will be published in the **Federal Register** at least 15 days before the date of the meeting. The public will have the opportunity to provide input at all meetings.

We expect the Working Group to continue for the duration of the Trinity River Restoration Program. Its continuation is, however, subject to biennial renewal.

Fifteen days after publication of this notice in the **Federal Register**, we will file a copy of the Working Group's charter with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, United States Senate; Committee on Resources, United States House of Representatives; and the Library of Congress.

The Certification for renewal is published below.

Certification

I hereby certify that the Trinity River Adaptive Management Working Group is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Public Laws 84–386 and 96–335 (Trinity River Stream Rectification Act), 98–541 and 104–143 (Trinity River Basin Fish and Wildlife Management Act of 1984, and 102–575 (The Central Valley Improvement Act). The Working Group will assist the Department of the Interior by providing advice and recommendations on all aspects of implementation of the Trinity River Restoration Program.

Dated: October 21, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–24081 Filed 10–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
08754	Sierra Endangered Cat Haven	69 FR 51703, August 20, 2004	October 7, 2004.
090181	Nashville Zoo	69 FR 51702, August 20, 2004	October 7, 2004.
090035	Wildlife Conservation Society	69 FR 51702, August 20, 2004	September 28, 2004.
089828	Cincinnati Zoo and Botanical Garden	69 FR 51702, August 20, 2004	September 28, 2004.
088784	Gibbon Conservation Center	69 FR 51703, August 20, 2004	October 7, 2004.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
063561	Florida Atlantic University	68 FR 69418; December 12, 2003	November 6, 2004.
072586	Boone and Crockett Club	69 FR 13329; March 22, 2004	June 22, 2004.
078744	Randall Davis	69 FR13329; March 22, 2004	November 6, 2004.
081115	Seward Association, dba Alaska SeaLife Center.	69 FR 3386; January 23, 2004	September 7, 2004.
088944	National Museum of the American Indian	69 FR 40965; July 7, 2004	September 9, 2004.

Dated: October 15, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–24082 Filed 10–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit notice issuance date
085459	Clyde Bros./Johnson Circus Corp.	60 FR 47171, August 4, 2004	October 1, 2004.
087188	University of Massachusetts	69 FR 51702; August 20, 2004	October 1, 2004.
090528	Douglas E. Owens	69 FR 51702; August 20, 2004	September 28, 2004.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit notice issuance date
090007	Larry P. Carlson	69 FR 47171; August 4, 2004	September 20, 2004.

Dated: October 8, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–24084 Filed 10–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 29, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–045532

Applicant: National Marine Fisheries Service, Miami, FL.

The applicant requests an amendment and renewal of their permit to import and/or introduce from the sea, biological samples collected from wild Kemp's ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretmochelys imbricata*), and leatherback sea turtle (*Dermochelys coriacea*) for the purpose of scientific research. The amendment request is for biopsy samples to be collected from incidentally captured live specimens and the renewal is for samples collected opportunistically from salvaged specimens. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–093944

Applicant: George R. Fusner, III, Brentwood, TN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: October 8, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–24083 Filed 10–27–04; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1054 and 1055 (Final)]

Light-Walled Rectangular Pipe and Tube From Mexico and Turkey

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Mexico and Turkey of light-walled rectangular (''LWR'') pipe and tube, provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective September 9, 2003, following receipt of a petition filed with the Commission and Commerce by California Steel and Tube, City of Industry, CA; Hannibal Industries, Los Angeles, CA; Leavitt Tube Co., Chicago, IL; Maruichi American Corp., Santa Fe Springs, CA; Northwest Pipe Co., Portland, OR; Searing Industries, Inc., Rancho Cucamonga, CA; Vest, Inc., Los Angeles, CA; and Western Tube and Conduit Corp., Long Beach, CA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of LWR pipe and tube from Mexico and Turkey were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commissions investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 23, 2004 (69 FR 22093). The hearing was held in Washington, DC, on August 31, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 12, 2004. The views of the Commission are contained in USITC Publication 3728 (October 2004), entitled Light-Walled Rectangular Pipe and Tube From Mexico and Turkey: Investigations Nos. 731–TA–1054 and 1055 (Final).

By order of the Commission.

Issued: October 22, 2004.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–24074 Filed 10–27–04; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with 28 U.S.C. 50.7, notice is hereby given that on October 6, 2004, a proposed Consent Decree in *United States of America, et al.* v. *CITGO Petroleum Corporation, et al.,* Civil Action No. H–04–3883, was lodged with the United States District Court for the Southern District of Texas.

In this action, the United States sought injunctive relief and penalties against CITGO Petroleum Corporation, CITGO Refining and Chemicals Company, L.P., PDV Midwest Refining, L.L.C., and CITGO Asphalt Refining Company (collectively ''CITGO''), pursuant to section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b), for alleged environmental violations at CITGO's petroleum refineries located in Savannah, Georgia, Lemont, Illinois, Lake Charles, Louisiana, Paulsboro, New Jersey, and Corpus Christi, Texas. The States of Georgia, Illinois, Louisiana, and New Jersey have joined in this settlement as signatories in the Consent Decree.

The proposed Consent Decree requires CITGO to implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''NO_X'') and sulfur dioxide (''SO_2'') from refinery process units, to reduce the number and impact of flaring events, and to adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, CITGO will pay a civil penalty of $3.6 million and perform a supplemental environmental project with a value of at least $5.0 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *CITGO Petroleum Corporation, et al.,* D.J. Ref. 90–5–2–1–07277.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, 910 Travis Street, #1500, Houston, Texas. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* The Consent Decree may also be examined on the following EPA Web site, *http://www.epa.gov/Compliance/resources/cases/civil/caa/citgo.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwork (*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 specify whether you would like a copy of the Consent Decree either with or without its appendices. For a copy of the Consent Decree with appendices enclose a check in the amount of $58.00 (25 cents per page reproduction costs) payable to the U.S. Treasury. For a copy of the Consent Decree without appendices enclose a check in the amount of $44.50 (25 cents per page reproduction costs) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–24072 Filed 10–27–04; 8:45 am]

BILLING CODE 4410–15–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 20, 2004.

TIME AND DATE: 10 a.m., Tuesday, November 9, 2004.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on an appeal of Eastern Associated Coal Corporation from the decision of an administrative law judge in *Secretary of Labor* v. *Eastern Associated Coal*

Corporation, Docket No. WEBA 2002–46. (Issues include whether the judge properly concluded that Eastern Associated Coal Corp. violated 30 CFR 48.11(a)(3) when it did not train two independent contractor employees on the provisions of its roof control plan addressing roof grouting.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs, subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR MORE INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–24195 Filed 10–26–04; 11:49 am]

BILLING CODE 6735–01–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY: Mississippi River Commission.

TIME AND DATE: 1 p.m., November 22, 2004.

PLACE: Mississippi River Commission Headquarters Building, 1400 Walnut Street, Vicksburg, MS.

STATUS: Open to the public for observation, but not for participation.

MATTERS TO BE CONSIDERED: The Commission will consider the Upper Mississippi River-Illinois Waterway System Navigation Feasibility Study, Final Integrated Feasibility Report, and Programmatic Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Gambrell, telephone (601) 634–5766.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–24194 Filed 10–26–04; 11:49 am]

BILLING CODE 3710–GX–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIMES AND DATES: 8–5 p.m., November 29–30, 2004.

PLACE: Renaissance Washington, DC Hotel, 999 9th Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Reports from the Chairperson and the Executive Director, Team Reports, Discussion on the Planning for Civil Rights Roundtable, Panel on Outdoor Activities for People with Disabilities; Unfinished Business, New Business, Announcements, Adjournment

FOR FURTHER INFORMATION CONTACT: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail).

AGENCY MISSION: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week before this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week before this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: October 25, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–24233 Filed 10–26–04; 1:09 pm]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering (1170).

Date/Time: November 3, 2004, 8 a.m.–6 p.m.; November 4, 2004, 8 a.m.–3 p.m.

Place: Holiday Inn Arlington—Ballston, 4610 North Fairfax Drive, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Deborah Young, Administrative Officer, Office of the Assistant Director for Engineering 703–292–8301.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Reason for Late Notice: Due to administrative complications.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession and engineering education.

Dated: October 25, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–24115 Filed 10–27–04; 8:45 am]

BILLING CODE 7555–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 69, Number 194, Page 60196) on October 7, 2004. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's November 10, 2004 Board of Directors meeting scheduled for 2 p.m. on November 4, 2004 has been cancelled.

CONTACT FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: October 26, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–24187 Filed 10–26–04; 10:55 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26642; File No. 812–13082]

American Family Life Insurance Company, et al.

October 21, 2004.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the ''Act'').

APPLICANTS: American Family Life Insurance Company (the ''Company''), American Family Variable Account I (the ''Life Account''), and American Family Variable Account II (the ''Annuity Account'') (collectively, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order approving the substitution of (1) Initial Class shares of the Fidelity VIP Mid Cap Portfolio (''Replacement Portfolio'') of the Fidelity Variable Insurance Products Fund III (''Fidelity Fund'') for Investor Class shares of Strong Mid Cap Growth Fund II (''Replaced Portfolio A'') of the Strong Variable Insurance Funds, Inc. (''Strong Fund'') and (2) Initial Class shares of the Replacement Portfolio for Investor Class shares of Strong Opportunity Fund II (''Replaced Portfolio B'') of Strong Opportunity Fund II, Inc. (''Strong Opportunity Fund'') currently held by the Life Account and the Annuity Account (each, an ''Account,'' together, the ''Accounts'') to support variable life insurance or variable annuity contracts issued by the Company (collectively, the ''Contracts'').

FILING DATES: The application was filed on April 30, 2004, and amended and restated on August 25, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 17, 2004, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o James F. Eldridge, Esq., American Family Life Insurance Company, 6000 American Parkway, Madison, Wisconsin 53783–0001, and Thomas E. Bisset, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the amended and restated application. The complete amended and restated application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. The Company is a stock life insurance company organized under Wisconsin law in 1957. The Company conducts a conventional life insurance business and is authorized to transact the business of life insurance, including annuities, in seventeen states.

2. Each of the Accounts is a segregated asset account of the Company, is a ''separate account'' as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust. Income, gains and losses, realized or unrealized, from the assets of each Account are credited to or charged against that Account without regard to other income, gains or losses of the Company. Purchase payments made under the Contracts are allocated to one or more subaccounts of each Account.

3. The Life Account currently is divided into 11 subaccounts, each of which invests exclusively in a specific investment portfolio of an underlying mutual fund. The assets of the Life Account support variable life insurance contracts issued by the Company, and interests in the Life Account offered through such Contracts have been registered under the Securities Act of 1933, as amended (the ''1933 Act'') on Form N–6 (File No. 333–44956).

4. The Annuity Account currently is divided into 11 subaccounts, each of which invests exclusively in a specific investment portfolio of an underlying mutual fund. The assets of the Annuity Account support variable annuity contracts issued by the Company, and interests in the Annuity Account offered through such contracts have been registered under the 1933 Act on Form N–4 (File No. 333–45592).

5. The Contracts are flexible premium variable annuity and variable life insurance contracts. For as long as a variable life insurance Contract remains in force or a variable annuity Contract has not yet been annuitized, a Contract owner may transfer all or part of the Contract value from one subaccount to another subaccount or to a fixed account. The Company reserves the right to revoke or modify the transfer privilege at any time, and reserves the right to assess a charge for transfers in excess of 12 per transfer year.

6. Each of the Contracts expressly reserves for the Company the right, subject to compliance with applicable law, to substitute shares of one underlying mutual fund or portfolio held by a subaccount of an Account for another. This right is disclosed in the prospectuses for the Contracts.

7. The Company proposes to substitute Initial Class shares of the Replacement Portfolio for Investor Class shares of Replaced Portfolio A and Investor Class shares of Replaced Portfolio B held in the Accounts (the ''proposed substitutions''). The proposed substitutions are part of an effort by the Company to provide a portfolio selection within the Contracts that: (1) Better represents the designated asset classes; (2) provides more favorable name recognition; and (3) provides more competitive long-term returns relative to other funds in the asset class peer group.

8. The Strong Fund is registered as an open-end management investment company under the Act (File No. 811–06553) and currently offers 3 separate investment portfolios, only one of which, Replaced Portfolio A, would be involved in the proposed substitution. The Strong Fund issues a separate series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A (File No. 33–45321). Strong Capital Management, Inc. (''Strong'') serves as the investment adviser to each portfolio.

9. The investment objective of Replaced Portfolio A is capital growth through investment of at least 80% of its

net assets in stocks of medium-capitalization companies (substantially from the technology sector) that the Portfolio's managers believe have favorable prospects for growth of earnings and capital appreciation. The net operating expenses (*i.e.*, after expense waivers and fee reimbursements) for the year ended December 31, 2003, was 1.18% (expressed as a percentage of average daily net assets). The average annual total return for the past three fiscal years for Replaced Portfolio A was: –30.8% (2001); –37.6% (2002); and 34.2% (2003).

10. The Strong Opportunity Fund is registered as an open-end management investment company under the Act (File No. 811–06552) and currently offers one investment portfolio, Replaced Portfolio B. The Strong Opportunity Fund issues a series of shares of beneficial interest in connection with the portfolio and has registered such shares under the 1933 Act on Form N–1A (File No. 33–45320). Strong serves as investment adviser to the portfolio.

11. The investment objective of Replaced Portfolio B is capital growth through investment primarily in stocks of medium-capitalization companies (defined as companies with market capitalization substantially similar to that of companies in the Russell Midcap Index) that the Portfolio's managers believe are underpriced yet have favorable prospects for growth of earnings. The net operating expenses (*i.e.*, after expense waivers and fee reimbursements) for the year ended December 31, 2003, was 1.09% (expressed as a percentage of average daily net assets). The average annual total return for the past three fiscal years for Replaced Portfolio B was: –3.7% (2001); –26.8% (2002); and 37.0% (2003).

12. The Fidelity VIP Fund is registered as an open-end management investment company under the Act (File No. 811–07205); the Replacement Fund is one of seven investment portfolios it currently offers. The Fidelity VIP Fund issues a series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A (File No. 33–54837). Each portfolio of the Fidelity VIP Fund has entered into an agreement with Fidelity Management & Research Company (''FMR'') under which FMR acts as investment adviser for the portfolio. Under each such investment advisory agreement, FMR has overall responsibility for the selection of investments in accordance with the investment objective, policies and limitations of the portfolio, and for handling the portfolio's business affairs. FMR Co., Inc. (''FMRC''), an investment adviser affiliate of FMR, has entered into a sub-advisory agreement with FMR under which FMRC acts as subadviser for each portfolio of the Fidelity VIP Fund, including the Replacement Portfolio. FMRC has daily responsibility for the management of the investment and reinvestment of the assets of the Replacement Portfolio.

13. The investment objective of the Replacement Portfolio is long-term growth of capital through investment of at least 80% of portfolio assets in securities of companies with medium market capitalization (defined as companies with market capitalization similar to that of companies in the Russell Midcap Index or the S&P MidCap 400). The net operating expenses (*i.e.*, after expense waivers and fee reimbursements) for the year ended December 31, 2003, was 0.70% (expressed as a percentage of average daily net assets). The average annual total return for the past three fiscal years for the Replacement Portfolio was: –3.26% (2001); –9.82% (2002); and 38.64% (2003).

14. Applicants assert that the Replacement Portfolio is an appropriate replacement for the Replaced Portfolios for each Contract. The investment objectives of the Replacement Portfolio are substantially identical to those of Replaced Portfolio A. Both pursue their investment objective by investing, under normal market conditions, at least 80% of their assets in medium capitalization companies that have favorable growth prospects. The investment adviser for Replaced Portfolio A and the investment adviser for the Replacement Portfolio also emphasize an active trading approach and rely on a fundamental analysis of each company in making an investment decision.

15. The Replacement Portfolio's investment objective also is substantially similar to that of Replaced Portfolio B. Both pursue their investment objective by investing primarily in medium capitalization companies that have favorable growth prospects. The investment adviser for Replaced Portfolio B and the investment adviser for the Replacement Portfolio also rely on a fundamental analysis of each company before making an investment decision.

16. Applicants represent that the Replacement Portfolio has available to it transactional advantages attributable to achieve economies of scale greater than those of each Replaced Portfolio and has a significantly lower expense ratio than either Replaced Portfolio even after expense waivers and reimbursements for the Replaced Portfolios have been taken into account.

17. In the May 2004 prospectuses for the Accounts and the Contracts, the Company notified owners of the Contracts of its intention to take the necessary actions, including the order requested by the amended and restated application, to carry out the proposed substitutions. The current prospectus for the Replacement Fund and the current prospectuses for each of the other portfolios available as investment options available under the Contracts, were bound together with the May 1, 2004, prospectuses for the Contracts and the Accounts.

Applicants' Legal Analysis

1. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. The Commission will approve such a substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The proposed substitutions appear to involve the substitution of securities within the meaning of Section 26(c) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(c) approving the proposed substitutions.

3. Applicants maintain that Contract owners will be better served by the proposed substitutions and that the proposed substitutions are appropriate given the Portfolios and other investment options available under the Contracts. In the last three years, the Replacement Portfolio has had investment performance superior to that of each Replaced Portfolio. The Replacement Portfolio has had substantially lower expenses over this same period than each Replaced Portfolio and substantially greater assets.

4. Applicants assert that the Replacement Portfolio and Replaced Portfolio A are substantially the same in their stated investment objectives and principal investment strategies. Applicants represent that the Replacement Portfolio and Replaced Portfolio B are substantially similar in their stated investment objectives and principal investment strategies as to afford investors continuity of investment. Applicants also assert that there is similarity in the principal investment risks for each Replaced Portfolio and the Replacement Portfolio.

5. Applicants state that, although each Replaced Portfolio benefits from an expense reimbursement arrangement that reduces the Portfolio's expenses, even after the reimbursements for the Replaced Portfolios have been taken into account, the expenses of the Replacement Portfolio are still lower than those of each Replaced Portfolio. Also, there is no assurance that the expense reimbursement arrangements for the Replaced Portfolios will continue in the future. Moreover, for two years following the proposed substitution, Contract owners affected by the proposed substitution will benefit from a subaccount and underlying Portfolio with aggregate annualized expenses that can be no higher than the aggregate annualized expenses of Replaced Portfolio B and the subaccount invested in Replaced Portfolio B for the fiscal year ended December 31, 2003.

6. Applicants assert that the proposed substitutions are not the type of substitution that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or disadvantage. Applicants assert that the proposed substitutions, therefore, will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

7. Applicants represent that the proposed substitutions also are unlike the type of substitution that Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of coverage offered by the Company under the Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the size, financial condition, type and reputation for service of the Company, from whom they purchased their Contract in the first place. These factors will not change because of the proposed substitutions.

8. Further, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the Act for the following reasons:

a. Within five days after the proposed substitutions, Applicants represent that the Company will send Contract owners who are affected by the substitutions written notice informing them that the substitutions have taken place, and will explain other procedures the Company intends to follow in connection with Contract owner transfers and exchanges following the substitutions.

b. From June 1, 2004, until the date of the proposed substitutions, the Company will permit Contract owners to make transfers of Contract value out of each Replaced Portfolio subaccount to other subaccounts or the fixed account without those transfers counting toward the limited number of transfers permitted each Contract year without a transfer charge. Likewise, for at least 30 days following the proposed substitutions, the Company will permit Contract owners affected by the substitutions to transfer Contract value out of the Replacement Portfolio subaccount to other subaccounts or the fixed account without those transfers counting toward the limited number of transfers permitted each Contract year without a transfer charge.

c. The Company will carry out the proposed substitutions by redeeming shares of each Replaced Portfolio held by the Accounts for cash and then applying the proceeds to the purchase of shares of the Replacement Fund. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit, or in the dollar value of his or her investment in any of the Accounts.

d. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the Company's obligations under the Contracts be altered in any way. The Company will pay all applicable expenses incurred in connection with the proposed substitutions, including brokerage commissions and legal, accounting, and other fees and expenses. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. In addition, the proposed substitutions will not result in adverse tax consequences for and will not alter the tax benefits to Contract owners.

e. For those who were Contract owners on the date of the proposed substitutions, the Company will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the twenty-four months following the date of the proposed substitutions, the subaccount investing in the Replacement Portfolio such that the sum of the Replacement Portfolio's operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculation of subaccount unit values) for such period will not exceed, on an annualized basis, the sum of Replaced Portfolio B's operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses for the fiscal year preceding the date of the proposed substitution. In addition, for twenty-four months following the proposed substitutions, the Company will not increase asset-based fees or charges for Contracts outstanding on the date of the proposed substitutions.

Conclusion

Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the substitutions. Section 26(c) in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2873 Filed 10–27–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50561; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 13 to the Options Intermarket Linkage Plan Regarding Natural Size

October 19, 2004.

I. Introduction

On May 10, 2004, May 11, 2004, June 22, 2004, July 21, 2004, August 12, 2004, and August 16, 2004, the International Securities Exchange, Inc. (''ISE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the American Stock Exchange LLC (''Amex''), the Pacific Exchange, Inc. (''PCX''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE'') (collectively, the ''Participants''), respectively, filed with

the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 13'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan'').[1] In Joint Amendment No. 13, the Participants propose to modify the definitions of Firm Customer Quote Size (''FCQS'') and Firm Principal Quote Size (''FPQS'') to accommodate the ''natural size'' of quotations. The Linkage Plan currently requires that the Participants be firm for both Principal Acting as Agent and Principal Orders for at least 10 contracts. The proposed Amendment would permit exchanges to be firm for the actual size of their quotation, even if this amount is less than 10 contracts.

The proposed amendment to the Linkage Plan was published in the **Federal Register** on August 24, 2004.[2] No comments were received on the proposed amendment. This order approves the proposed amendment to the Linkage Plan.

II. Description of the Proposed Amendment

Proposed Joint Amendment No. 13 seeks to change the definitions of both FCQS and FPQS. While the proposed Amendment would maintain a general requirement that the FCQS and FPQS be at least 10 contracts, that requirement would not apply if a Participant were disseminating a quotation of fewer than 10 contracts. In that case, the Participant may establish a FCQS or FPQS equal to its disseminated size, or ''natural size.''

Under the proposed amendment, as with Linkage orders today, if the order is of a size eligible for automatic execution, the receiving exchange must provide automatic execution of the Linkage order. If this is not the case (for example, the receiving exchange's automatic execution system is not engaged), the receiving exchange may allow the order to drop to manual handling. However, the receiving exchange still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act[3] and Rule 11Aa3–2 thereunder,[4] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets.

The Commission notes that the Participants adopted the current definitions of FCQS and FPQS, which impose a ''10-up'' requirement, at a time when all the Participants had rules requiring that their minimum quotation size be for at least 10 contracts. Consequently, an exchange receiving a customer limit order for fewer than 10 contracts would disseminate the price of the customer limit order with a size of 10 contracts and the specialist or the trading crowd would be responsible to make up the difference. Since implementation of the Linkage Plan, several of the Participants have modified their rules to permit them to disseminate the ''natural size'' of customer limit orders that are of a size less than 10 contracts.[5] Proposed Joint Amendment No. 13 should conform the minimum quotation requirements contained in the Linkage Plan to be consistent with the Participants' rules regarding the dissemination of the size associated with customer limit orders. The Commission believes that conforming the requirements of the Linkage Plan to the requirements adopted by the Participants, which permit them to disseminate an order's ''natural size,'' should provide greater transparency to investors and the marketplace and better reflect the true state of liquidity in the marketplace.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[6] and Rule 11Aa3–2 thereunder,[7] that the proposed Joint Amendment No. 13 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2877 Filed 10–27–04; 8:45 am]

BILLING CODE 8010–01–P

[1] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[2] *See* Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050.

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 240.11Aa3–2.

[5] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15); 46029 (June 4, 2002), 67 FR 40363 (June 12, 2002) (SR–PCX–2002–30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (SR–CBOE–2001–56); 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR–CBOE–2002–05); and 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR–Amex–2003–24).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 240.11Aa3–2.

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27903]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 22, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 15, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 15, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–10240)

Entergy Corporation (''Entergy''), a registered holding company, 639 Loyola Avenue, New Orleans, LA 70113; Entergy's public utility subsidiaries: Entergy Arkansas, Inc., (''Arkansas''), 424 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy Gulf States, Inc., (''Gulf States''), 350 Pine Street,

Beaumont, TX 77701, Entergy Louisiana, Inc., (''Louisiana''), 4809 Jefferson Highway, New Orleans, LA 70121, Entergy Mississippi, Inc. (''Mississippi''), 308 East Pearl Street, Jackson, MS 39201, and Entergy New Orleans, Inc., (''New Orleans''), 1600 Perdido Building, New Orleans, LA 70112 (collectively the ''Operating Companies,'' and individually, an ''Operating Company''); System Energy Resources, Inc., (''System Energy''), 1340 Echelon Parkway, Jackson, MS 39213, a generating company subsidiary of Entergy; Entergy Operations, Inc., (''EOI''), 1340 Echelon Parkway, Jackson, MS 39213, a nuclear power plant operations subsidiary of Entergy; Entergy Energy Services, Inc. (''ESI''), 639 Loyola Avenue, New Orleans LA 77701, a service company subsidiary of Entergy; and System Fuels, Inc., (''SFI''), 350 Pine Street, Beaumont, TX 77701, a fuel supply company of four of the Operating Companies, (collectively, ''Applicants'') have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, and 54 under the Act.

I. Background

By order dated November 29, 2001 (HCAR No. 27470) (''Prior Order''), the Commission authorized through November 30, 2004: (1) The Operating Companies, System Energy, EOI, ESI and SFI to make unsecured short-term borrowings through the Entergy System Money Pool (''Money Pool''); (2) the Operating Companies and System Energy to issue and sell short-term debt; (3) Entergy to make loans to EOI, ESI and SFI, and for EOI, ESI and SFI to issue notes evidencing the loans made by Entergy and under external banks lines of credit; [1] and (4) Entergy to guarantee the obligations of EOI, ESI and SFI under the external bank lines of credit.

II. Proposed Transactions

The Operating Companies, System Energy, EOI, ESI and SFI propose to continue, through November 30, 2007 (the ''Authorization Period''), to finance their interim capital needs through Money Pool borrowings as provided below. The Operating Companies and System Energy also request authority to issue notes to banks evidencing short-term borrowings and to issue and sell commercial paper in the amounts and under the terms and conditions set forth below.

The Operating Companies and System Energy propose to effect short-term borrowings through the Money Pool and through the issuance of notes evidencing borrowing from banks and through the issuance and sale of commercial paper in the following maximum amounts for each company: Arkansas, $235 million; Gulf States, $340 million; Louisiana, $225 million; Mississippi, $160 million; New Orleans, $100 million; and System Energy, $140 million.

In addition EOI, ESI, SFI and Entergy request authorization to extend (i) the maturities of the loan agreements authorized in the Prior Order between Entergy and each of EOI, ESI and SFI the notes issued to Energy pursuant to the loan agreements, and (ii) the existing authorization with respect to EOI, ESI and SFI issuing notes evidencing borrowings under loan agreements entered with one or more banks (and with respect to Entergy guaranteeing the obligations of EOI, ESI and SFI thereunder) through the Authorization Period in the following aggregate amounts: $20 million in the case of EOI and $200 million each, in the case of ESI and SFI, all as further set forth below.

A. Money Pool

The Operating Companies, System Energy, Entergy, EOI, ESI and SFI (collectively, the ''Participants,'' and individually, a ''Participant'') propose to participate in the Money Pool, which will be administered on behalf of the Participants by ESI under the direction of its Treasurer. The Money Pool will consist solely of available funds from the treasuries of the Participants, which will be loaned on a short-term basis (potentially as short as intra-day) to any one or more of the Participants in the Money Pool, other than Entergy. Entergy will be a participant in the Money Pool only to the extent that it has funds available to invest through the Money Pool, but in no event will Entergy be permitted to borrow funds held in the Money Pool.

The determination of whether a Participant at any time has funds that may be available to the Money Pool will be made by, or under the direction of, its respective Treasurer or other designee. Participants will not make external borrowings for the purpose of making loans to other Participants in the Money Pool.

The operation of the Money Pool will be designed and managed to match, on a daily basis, the available cash and borrowing requirements of the Participants, thereby reducing the need for borrowings to be made by the Participants from external sources. Although it is generally expected that the short-term borrowing requirements of the Operating Companies and System Energy will be met first with the proceeds of borrowing through the Money Pool, and then, only to the extent necessary with the proceeds of external borrowings, there may be circumstances where it may be desirable for one or more of the Participants to make short-term bank borrowings, notwithstanding the existence of available funds in the Money Pool.

The Operating Companies and System Energy will have priority as borrowers from the Money Pool. EOI, ESI and SFI will be permitted to borrow through the Money Pool, only if, on a given day, there are funds available in the Money Pool after the needs of the Operating Companies and System Energy have been satisfied.

Some of System Energy's existing credit arrangements require (absent waivers) that System Energy's Money Pool borrowings be deemed subordinated indebtedness to the extent that in the event of a default by System Energy or the insolvency, liquidation, reorganization or similar proceedings (a ''Default Condition'') affecting System Energy, no payments by System Energy of principal or interest on its Money Pool obligations may be made until all obligations of System Energy under these credit arrangements have been paid or otherwise provided for. Except where a Default Condition exists, System Energy would be permitted to make payments of principal and interest on account of its Money Pool borrowings.

With respect to funds remaining in the Money Pool after satisfaction of the borrowing needs of the Participants, ESI, the administrator of the Pool, will invest the remaining funds and allocate the earnings on these funds among the Participants on a pro rata basis in accordance with their respective interest in the funds. ESI proposes to invest the excess funds in investments as are permitted by the provisions of Section 9(c) and Rule 40 of the Act.

Subject to each Participant's borrowing limits specified above, the Participants making borrowing through the Money Pool (other than EOI, ESI, and SFI) will be entitled to borrow, on any given day, an amount of the total funds then available for lending to the Participants determined on the basis of an equal allocation of the funds among all borrowing Participants, except that in circumstances where one or more borrowing Participants would be provided with funds in excess of the Participant's respective borrowing

[1] EOI, ESI and SFI do not currently have any external bank lines of credit pursuant to this authorization.

requirements, the excess will be available for loans equally allocated among the remaining borrowing Participants.

All loans will be payable on demand (subject to the subordination provision described above in the case of System Energy), may be prepaid at any time without premium or penalty, and will bear interest payable monthly at a rate calculated on a daily basis, equal to the Daily Weighted Average Investment Rate of the Money Pool portfolio; provided however, that in the event, on and as of any particular day, there are no excess Money Pool funds invested in the Money Pool portfolio, the Daily Federal Funds Effective Rate as quoted by the Federal Reserve Bank of New York will be the rate of interest applicable to Money Pool loans and borrowings for that day. ''Daily Weighted Average Investment Rate'' as applied to any day, shall be calculated by multiplying (A) the aggregate of the total daily interest payable on all investments in the Money Pool portfolio (consisting of excess Money Pool funds not loaned to the Participants) outstanding as of that day by (B) 360, and dividing the product by the total amount invested in the Money Pool portfolio as of that day. For purpose of calculating the daily interest payable on each investment in the Money Pool portfolio in (A) above, the original cost of each investment is multiplied by its respective yield and the product is divided by 360.

In the event that, on any given day, the available funds in the Money Pool are insufficient to satisfy the short-term borrowing requirements of one or more of the Operating Companies or System Energy, the Operating Company or System Energy, as the case may be, will effect short-term borrowing through bank loans and/or sales of commercial paper as provided below.

B. Lines of Credit

Each of the Operating Companies and System Energy may establish lines of credit with various commercial banks. These lines of credit may be arranged on an individual basis, or on a consolidated basis with each other and with EOI, ESI and SFI.

Borrowings from banks will be in the form customarily used by the lending bank, will be secured or unsecured, will be payable not later than one year from the date of issuance, and will bear interest at rates which will not exceed the greater of (a) 500 basis points over the comparable-term London Interbank Offered Rate (''LIBOR'') or (b) a gross spread over LIBOR that is consistent with bank borrowings by companies of the same or reasonably comparable credit quality and having the same or reasonably similar maturities and similar terms, conditions and features.

The Participants may agree to pay to each lending bank (a) a commitment, facility or similar fee that will be (i) a fixed dollar amount; and/or (ii) a percentage of the total commitment or unused commitment, as well as (b) one time closing fees, consisting of up-front fees, arrangement fees, administrative agency fee or similar closing fees. The fees will be negotiated at the time of the arrangement and will be comparable to fees in the applicable market for borrowing arrangements with similar features and terms and conditions to borrowers of comparable credit quality, provided that in no event shall these fees exceed five percent (5%) of the aggregate principal amount of the applicable bank borrowings.

C. Commercial Paper Arrangements

Each of the Operating Companies and System Energy proposes to issue, reissue and sell the commercial paper directly to a dealer in commercial paper (''Dealer'') at a discount not in excess of the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturity sold by public utility issuers to Dealers.

The proposed commercial paper will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, the actual maturity to be determined by market conditions and the particular borrower's anticipated cash requirement at the time of issuance. No commission or fee will be payable by the Operating Companies or System Energy in connection with the issuance and sale of the commercial paper. Each Dealer will reoffer and sell the commercial paper to customers on a non-public list for each Operating Company and System Energy, consisting of financial and non-financial institutions that normally invest funds in commercial paper, at the customary discount rate for commercial paper. Applicants state that they expect the commercial paper to be held by the buyers to maturity. However, each Dealer may, if desired by a buyer, repurchase the commercial paper for resale to other customers on the list.

D. EOI, ESI and SFI Loan Agreements With Entergy

EOI, ESI and SFI were each previously authorized by the Commission through November 30, 2004 to enter into a separate loan agreement with Entergy of up to an aggregate principal amount of $20 million in the case of EOI, $200 million in the case of ESI and $200 million in the case of SFI. EOI, ESI, SFI and Entergy now propose to enter into an amendment to each of their respective loan agreements, which will extend the expiration date of the borrowing period through the Authorization Period and provide for the issuance of new notes stated to mature on November 30, 2007. The aggregate amount that EOI, ESI and SFI may borrow from Entergy through the Authorization Period will be $20 million, $200 million and $200 million, respectively.

Each loan agreement mentioned above will provide that the amount of Entergy's respective commitments will be correspondingly reduced by the commitments of any bank or banks to lend money to EOI, ESI, or SFI, as applicable. The new notes will continue to be payable to the order of Entergy and may be prepaid at any time without premium or penalty and will bear interest, payable quarterly, on the unpaid principal amount at the rate that is determined from time to time to be equal to Entergy's effective cost of short-term debt.

E. External Borrowing Arrangements

EOI, ESI and SFI further propose to extend the period during which they may enter into external borrowing arrangements with one or more banks through the Authorization Period. EOI, ESI and SFI may arrange these lines of credit on an individual basis, or on a consolidated basis with each other, and/or with the Operating Companies and System Energy. The proposed bank borrowing will be in an aggregate principal amount of up to $20 million in the case of EOI, up to $200 million in the case of ESI and up to $200 million in the case of SFI. Additionally, these borrowings (and any related promissory notes) will be in the form customarily used by lending banks, will be payable not later than November 30, 2007 and will bear interest at rates which will not exceed the greater of (a) 500 basis points over LIBOR or (b) a gross spread over LIBOR that is consistent with bank borrowings by companies of the same or reasonably comparable credit quality and having the same or reasonably similar maturities and similar terms, conditions and features.

Each borrower may agree to pay to each bank (a) a commitment, facility or similar fee that will be (i) a fixed dollar amount; and/or (ii) a percentage of the total commitment or unused commitment, as well as (b) one-time closing fees. These fees will be negotiated at the time of the arrangement and will be comparable to

the fees generally prevailing in the market for borrowing arrangements having similar terms to borrowers of comparable credit quality, provided that in no event will these fees exceed five percent (5%) of the aggregate principal amount of the applicable bank borrowings.

As an inducement to banks to make loans to EOI, ESI, and SFI, it is contemplated that Entergy may be required to guarantee the obligations of EOI, ESI and SFI in an aggregate principal amount not to exceed $20 million in the case of EOI, $200 million in the case of ESI and $200 million in the case of SFI. Entergy agrees that the fee, if any, charged to EOI, ESI and SFI for any guarantee provided will not exceed the cost, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding. Accordingly, Applicants request authority for Entergy to issue these guarantees through the Authorization Period.

F. Use of Proceeds

The proceeds to be received by the Operating Companies and System Energy from borrowings through the Money Pool and through borrowings from banks and the issuance and sale of commercial paper, together with other funds available from time to time to the Operating Companies and System Energy from operations will be used to provide interim financing for construction expenditures, to meet long-term debt maturities and satisfy sinking fund requirements, as well as for the possible refunding, redemption, purchase or other acquisition of all or a portion of certain series of debt and preferred stock and for general corporate purposes.

The proceeds of borrowings by EOI through the Money Pool, as well as the proceeds of borrowings by EOI pursuant to its loan agreement with Entergy and other external borrowing arrangements will be used to finance EOI's interim capital needs.

The proceeds of borrowings by ESI through the Money Pool, as well as the proceeds of borrowing by ESI pursuant to ESI's loan agreement with Entergy and other external borrowings will be used by ESI for the repayment of other borrowings from time to time and for any lawful purpose in connection with its performance as a subsidiary service company under the Act.

The proceeds of borrowings by SFI through the Money Pool, as well as the proceeds of borrowings by SFI pursuant to its loan agreement with Entergy and other external borrowing arrangements of SFI will be used by SFI for the repayment of other borrowings and for any lawful purpose in connection with its fuel supply program.

None of the proceeds to be received by the Operating Companies, System Energy, EOI, ESI or SFI from borrowings through the Money Pool or through the issuance and sale of promissory notes and commercial paper will be used to invest directly or indirectly in an exempt wholesale generator or foreign utility company as defined in Section 32 or 33, respectively, of the Act.

G. Financing Parameters

1. Common Equity Ratio

Entergy and each of the Operating Companies, System Energy and EOI represents that it will at all times during the Authorization Period maintain common equity (as reflected in the most recent Quarterly Report on Form 10–Q or Annual Report on Form 10–K filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization. The term ''consolidated capitalization'' means shareholders' equity, long-term debt, preferred stock with sinking fund and short-term debt.

2. Investment Grade Rating

Entergy, the Operating Companies, System Energy and EOI each represent that, apart from promissory notes issued to evidence borrowings from the Money Pool, no guarantees or other securities may be issued by it in reliance upon the authorization granted by the Commission under this Application, unless (1) the security to be issued, if rated, is rated investment grade, (2) all outstanding securities of the issuer that are rated, are rated investment grade (except, in the case of Gulf States, the company's preferred stock and trust preferred securities (''QUIPS'') and, in the case of New Orleans, the company's preferred stock, and (3) all outstanding securities of Entergy that are rated, are rated investment grade (''Investment Grade Ratings Criteria''). For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by Moody's Investors Service, Standard & Poor's, Fitch Ratings or any other nationally recognized statistical rating agency (''NRSRO''), as that term is used in paragraphs (C)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other security at any time that one or more of the Investment Grade Ratings Criteria are not satisfied.

Rochester Gas and Electric Corporation (70–10241)

Rochester Gas and Electric Corporation (''RG&E''), is a New York corporation and a wholly owned subsidiary of RGS Energy Group, Inc. (''RGS'') [2],which, in turn, is a wholly owned subsidiary of Energy East Corporation, (''Energy East'') a New York corporation and a registered holding company under the Act. RG&E is located at 89 East Avenue, Rochester, New York. RG&E filed a Declaration seeking authorization, under section 12(c) of the Act and rules 42, 46 and 54 under the Act.

RG&E is a public utility company engaged in the purchase, generation, transmission, distribution and sale of electricity and the purchase, distribution and sale of natural gas in New York.

In connection with the restructuring of the electric industry in New York, RG&E sold the Robert E. Ginna Nuclear Power Plant for approximately $420,000,000. According to RG&E it is in the interests of RG&E's security holders and ratepayers for RG&E to transfer by dividend up to $175 million to an associate company and to use the amount for the reduction of debt held by Energy East. RG&E states, among other things, that RG&E's revenues from operations are sufficient to fund its expenses and capital improvements, that its current equity as a percentage of its total capitalization is in excess of 45%, and that the New York Public Service Commission will not allow RG&E to earn a return on equity that is in excess of 45%. RG&E asserts that the better use of the funds represented by the proposed dividend is reducing debt within the Energy East holding company system. Accordingly, RG&E requests authority from the Commission for RG&E to declare or pay dividends out of capital or unearned surplus and for RG&E to acquire, retire or redeem its securities from an associate company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2901 Filed 10–27–04; 8:45 am]

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[2] RGS is a New York corporation and a public utility holding company that is exempt from registration by order under section 3(a)(1) of the Act. According to RG&E, the Commission has authorized RGS to conduct similar transactions. *Energy East Corp. et al.,* HCAR No. 27643 (Jan. 28, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50562; SR–BSE–2004–14; SR–CBOE–2004–41; SR–ISE–2004–01; SR–PCX–2004–84; SR–Phlx–2004–16]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc.; a Proposed Rule Change by the Chicago Board Options Exchange, Inc.; a Proposed Rule Change and Amendments No. 1 and 2 by the International Securities Exchange, Inc.; a Proposed Rule Change by the Pacific Exchange, Inc.; and a Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to Minimum Size Guarantees for Linkage Orders

October 19, 2004.

I. Introduction

On January 13, 2004, February 13, 2004, April 6, 2004, July 7, 2004, and September 1, 2004, the International Securities Exchange, Inc. (''ISE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), and the Pacific Exchange, Inc. (''PCX'') (collectively, the ''options exchanges''), respectively, 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] proposed rule changes to modify the definitions of Firm Customer Quote Size (''FCQS'') and Firm Principal Quote Size (''FPQS'') contained in their Exchange rules by changing certain minimum size guarantees for Linkage Orders to accommodate the ''natural size'' of quotations.[3]

BSE submitted BSE Amendment No. 1 to its proposed rule change on June 9, 2004.[4] ISE submitted ISE Amendment No. 1 to its proposed rule change on May 10, 2004,[5] and ISE Amendment No. 2 to its proposed rule change on July 30, 2004.[6] Phlx submitted Phlx Amendment No. 1 to its proposed rule change on August 11, 2004.[7]

Notice of BSE's proposed rule change, as amended, was published in the **Federal Register** on September 16, 2004.[8] Notice of CBOE's proposed rule change was published in the **Federal Register** on September 16, 2004.[9]

Notice of ISE's proposed rule change, as amended, was published in the **Federal Register** on September 16, 2004.[10] Notice of PCX's proposed rule change was published in the **Federal Register** on September 16, 2004.[11] Notice of Phlx's proposed rule change, as amended, was published in the **Federal Register** on September 16, 2004.[12] No comments were received on the proposed rule changes. This order approves the proposed rule changes, as amended.[13]

II. Description of the Proposals

The purpose of the proposed rule changes is to amend the definitions of FCQS and FPQS provided in each of the options exchange's rules [14] to conform them to the definitions provided in the Linkage Plan, as amended by Joint Amendment No. 13.[15] While the proposed rule changes would maintain a general requirement, in each of the options exchange's rules, that the FCQS and FPQS be at least 10 contracts, that requirement would not apply if, pursuant to its rules, an options exchange were disseminating a quotation of fewer than 10 contracts. In that case, the options exchange could establish a FCQS or FPQS equal to its disseminated size, or ''natural size.''

Under the proposed rule changes, as with Linkage orders today, if an order is of a size eligible for automatic execution, the receiving options exchange must provide an automatic execution of the Linkage order. If this is not the case (for example, the receiving options exchange's automatic execution system is not engaged), the receiving exchange may allow the order to drop to manual handling. However, the receiving options exchange still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

III. Discussion

After careful review, the Commission finds that the proposed rule changes, as amended, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposals, as amended, are consistent with the provisions of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The options exchanges have also filed an amendment to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') that corresponds to the proposed rule changes, described herein. (''Joint Amendment No. 13''). *See* Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 26, 2004) (File No. 4–429).

[4] *See* Letter from John Boese, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 8, 2004 (''BSE Amendment No. 1''). In BSE Amendment No. 1, the BSE amended the proposed rule text to clarify that the general requirement that the BSE's FCQS and FPQS be at least 10 contracts would not apply if the BSE were disseminating a quotation of fewer than 10 contracts. In that case, the BSE explained that it may establish a FCQS or FPQS equal to its disseminated size.

[5] *See* Letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated May 7, 2004 (''ISE Amendment No. 1''). In ISE Amendment No. 1, the ISE amended the proposed rule text to clarify that the general requirement that the ISE's FCQS and FPQS be at least 10 contracts would not apply if the ISE were disseminating a quotation of fewer than 10 contracts. In that case, the ISE explained that it may establish a FCQS or FPQS equal to its disseminated size.

[6] *See* Letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated July 28, 2004 (''ISE Amendment No. 2''). In ISE Amendment No. 2, the ISE submitted a new Form 19b–4, which replaced and superseded the original filing in its entirety.

[7] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated August 10, 2004 (''Phlx Amendment No. 1''). In Phlx Amendment No. 1, the Phlx amended the proposed rule text to clarify that the general requirement that the Phlx's FCQS and FPQS be at least 10 contracts would not apply if the Phlx were disseminating a quotation of fewer than 10 contracts. In that case, the Phlx explained that it may establish a FCQS or FPQS equal to its disseminated size.

[8] Securities Exchange Act Release No. 50341 (September 9, 2004), 69 FR 55850 (September 16, 2004) (SR–BSE–2004–14).

[9] Securities Exchange Act Release No. 50340 (September 9, 2004), 69 FR 55852 (September 16, 2004) (SR–CBOE–2004–41).

[10] Securities Exchange Act Release No. 50339 (September 9, 2004), 69 FR 55853 (September 16, 2004) (SR–ISE–2004–01).

[11] Securities Exchange Act Release No. 50346 (September 10, 2004), 69 FR 55857 (September 16, 2004) (SR–PCX–2004–84).

[12] Securities Exchange Act Release No. 50342 (September 9, 2004), 69 FR 55864 (September 16, 2004) (SR–Phlx–2004–16).

[13] The Commission notes that the American Stock Exchange LLC (''Amex''), filed a comparable proposed rule change with the Commission on August 3, 2004, and Amendment No. 1 thereto on September 10, 2004. Notice of Amex's proposed rule change, as amended, was published in the **Federal Register** on September 23, 2004. *See* Securities Exchange Act Release No. 50394 (September 16, 2004), 69 FR 57110 (SR–Amex–2004–63). Section 19(b)(2) of the Act provides that the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission has determined to wait until the requisite thirty days has passed before acting on the Amex's filing.

[14] *See* Chapter XII, Sections 1(g) & (h) of the Rules of the BSE's Boston Options Exchange Facility; CBOE Rules 6.80(9) & (10); ISE Rules 1900(7) & (8); PCX Rules 6.92(a)(9) & (10); and Phlx Rules 1083(g) & (h).

[15] *See* Notice of Joint Amendment No. 13 *supra* note 3.

[16] In approving these proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Section 6(b)(5) of the Act,[17] which requires, among other things, that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that the options exchanges adopted the current definitions of FCQS and FPQS, which impose a ''10-up'' requirement, at a time when all the options exchanges had rules requiring that their minimum quotation size be for at least 10 contracts. Consequently, an exchange receiving a customer limit order for fewer than 10 contracts would disseminate the price of the customer limit order with a size of 10 contracts and the specialist or the trading crowd would be responsible to make up the difference. Since implementation of the Linkage Plan, several of the options exchanges have modified their rules to permit them to disseminate the ''natural size'' of customer limit orders that are of a size of less than 10 contracts.[18] The Commission believes that approval of the proposed rule changes, which will permit options exchanges to conform their Linkage rules to other Exchange rules allowing them to disseminate a customer limit order's ''natural size,'' should provide greater transparency to investors and the marketplace and better reflect the true state of liquidity in the marketplace.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule changes (SR–BSE–2004–14; SR–CBOE–2004–41; SR–ISE–2004–01; SR–PCX–2004–84; SR–Phlx–2004–16), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2875 Filed 10–27–04; 8:45 am]

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[17] 15 U.S.C. 78f(b)(5).

[18] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15); 46029 (June 4, 2002), 67 FR 40363 (June 12, 2002) (SR–PCX–2002–30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (SR–CBOE–2001–56); 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR–CBOE–2002–05); and 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR–Amex–2003–24).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50577; File No. SR–NASD–2004–128]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Modify the Annual Fee for Certain Issuers Listed on the Nasdaq Stock Market, Inc.

October 21, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 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'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rules 4510(c) and 4520(c) to modify the annual fee for domestic and foreign issuers (other than American Depositary Receipts (''ADRs'')) listed on the Nasdaq National Market and for all issuers listed on The Nasdaq SmallCap Market. Nasdaq will implement the proposed rule change on January 1, 2005, for issuers listed on Nasdaq as of the date of approval of this rule filing, and upon approval for all new listings after the date of approval of this rule filing. In addition, Nasdaq proposes to adopt new IM–4520–1 to clarify that no fees are due from issuers described in Rule 4320(c).

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

* * * * *

4510. The Nasdaq National Market

(a)–(b) No change.

(c) Annual Fee—Domestic and Foreign Issues.

(1) The issuer of each class of securities, other than an ADR, that is a domestic or foreign issue listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares [$21,225] *$24,500*
10+ to 25 million shares [$26,500] *$30,500*
25+ to 50 million shares [$29,820] *$34,500*
50+ to 75 million shares [$39,150] *$44,500*
75+ to 100 million shares [$51,750] *$61,750*
Over 100 million shares [$60,000] *$75,000*

(2)–(4) No change.

(d)–(e) No change.

* * * * *

4520. The Nasdaq SmallCap Market

(a)–(b) No change.

(c) Annual Fee

(1) The issuer of [a] *each* class of securities that is a domestic or foreign issue, including American Depositary Receipts (ADRs), listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. an annual fee [to be computed as follows:] *calculated on total shares outstanding according to the following schedule:*

Up to 10 million shares $17,500
Over 10 million shares $21,000

[(A) 15,000 for the first issue if it has total shares outstanding of up to 10 million shares; or

(B) $16,000 for the first issue if it has total shares outstanding of 10 million or more shares; plus

(C) $2,000 for each additional issue.

(D) For companies with more than one issue, the first issue is the company's common stock or common stock equivalent with the highest total shares outstanding. For companies with no common stock or common stock equivalent, the first issue is the issue with the highest total shares outstanding.]

(2)–(4) No change.

(5) Total shares outstanding means the aggregate of all classes of equity securities included in The Nasdaq SmallCap Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASD Manual found at *www.nasd.com*, which was current as of the date of this filing. No pending rule filings would affect Rule 4510(c) and 4520(c). Telephone conversation between Arnold Golub, Office of General Counsel, Amex, and Richard Holley, Attorney, Division of Market Regulation, Commission, dated October 14, 2004.

(d) No change.

* * * * *

IM–4520–1. Foreign Exempt Securities

Rules 4520(b)(4) and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of the additional share and annual listing fees otherwise due. Pursuant to that authority, Nasdaq has determined to waive any additional share or annual fee that otherwise would be due from any issuer described in Rule 4320(c).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to modify the annual fees for domestic and foreign issuers (other than ADRs) listed on the Nasdaq National Market and for all issuers listed on The Nasdaq SmallCap Market. Pursuant to the rule change, annual fees on the Nasdaq National Market would increase from a minimum of $21,225 and a maximum of $60,000 to a minimum of $24,500 and a maximum of $75,000. Annual fees on The Nasdaq SmallCap Market would increase from a minimum of $15,000 and a maximum of $16,000 to a minimum of $17,500 and a maximum of $21,000. In addition, Nasdaq is proposing to eliminate the separate $2,000 charge to SmallCap Market issuers that list additional classes of stock. Instead of this separate charge, Nasdaq will aggregate shares outstanding for all issues of stock in determining the annual fee, as is currently done on the Nasdaq National Market.

These fee increases are necessary to support the ongoing cost of issuer services and to fund future product and service investments. Nasdaq annual fees were last increased in 2001 for National Market issuers and in 2003 for SmallCap Market issuers. The services added since the prior increase include enhancements to the trading systems such as the Closing Cross, a centralized order facility that brings together the buy and sell interest in specific NASDAQ stocks and executes all shares for each stock at a single price, and continued improvements to Nasdaq Online, the Market Intelligence Desk, the Nasdaq Corporate Services Network, and NASDAQ.com. In addition, the cost of monitoring issuers for ongoing compliance with Nasdaq's listing standards has increased, in part as a result of Nasdaq's enhanced corporate governance requirements, which were approved in November 2003.

The new annual fee schedule would be effective January 1, 2005 for all issuers listed on The Nasdaq Stock Market at the time of approval of this rule filing. For newly listing issuers, the new annual fee schedule would be effective once approved.

In addition, Nasdaq is proposing to adopt new Interpretive Material that clarifies that issuers exempt from registration with the Commission pursuant to SEC Rule 12g3–2(b), which are eligible to be quoted on Nasdaq pursuant to Rule 4320(c), are exempt from annual fees and additional share fees. These companies are not listed on Nasdaq at their own initiative, and have not signed an application or listing agreement. As such, Nasdaq believes it would be inequitable to assess fees against this small group of uniquely situated issuers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[4] in general, and with Section 15A(b)(5) of the Act,[5] in particular, in that it is designed to provide an equitable allocation of reasonable fees and charges among issuers listed on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received by Nasdaq.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–128 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–NASD–2004–128. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for

inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–128 and should be submitted on or before November 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2876 Filed 10–27–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50579; File No. SR-PCX–2004–97]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Amendment to the Automatic Opening Rotations Pilot Program

October 21, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 14, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot expiring on March 31, 2005.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes amending PCX Rule 6.64, Commentary .03 to extend its Automated Opening Rotation (''AOR'') pilot program for six months. The text of the proposed rule change is available at PCX and at the Commission.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 30, 1999, the Commission approved a one-year pilot program for the operation of the Exchange's AOR System.[3] On August 21, 2000,[4] August 13, 2001,[5] June 10, 2002,[6] and August 13, 2003,[7] the Commission granted one-year extensions to the pilot program. The latest pilot program extension expired on September 30, 2004. The Exchange proposes to extend the AOR pilot program for an additional six months, retroactive from September 30, 2004 until March 31, 2005.

AOR provides a procedure to facilitate the execution of option orders at the opening by providing an electronic means of establishing a single price opening. The Exchange is requesting an additional extension of the AOR pilot program for six months, to March 31, 2005. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, ''PCX Plus,'' on an issue-by-issue basis.[8] As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the current AOR process. PCX Plus will eventually replace the AOR process in its entirety.[9] Hence, the Exchange will not be seeking permanent approval of the AOR pilot program.[10] Currently, the AOR pilot program is operating successfully and without any problems. Therefore, the Exchange believes that an extension of the pilot program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[11] of the Act, in general, and furthers the objectives of section 6(b)(5),[12] in particular, in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send E-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2004–97 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.

[3] *See* Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999) and Securities Exchange Act Release No. 41824 (September 1, 1999), 64 FR 49263 (September 10, 1999).

[4] *See* Securities Exchange Act Release No. 43187 (August 21, 2000), 65 FR 52464 (August 29, 2000).

[5] *See* Securities Exchange Act Release No. 44688 (August 13, 2001), 66 FR 43600 (August 20, 2001).

[6] *See* Securities Exchange Act Release No. 46055 (June 10, 2002), 67 FR 41288 (June 17, 2002).

[7] *See* Securities Exchange Act Release No. 48333 (August 13, 2003), 68 FR 50205 (August 20, 2003).

[8] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

[9] The PCX represents that it will file a rule proposal to eliminate the AOR pilot program rule text in Rule 6.64(c) and Commentary .03 if the PCX Plus transition is completed before March 31, 2005.

[10] The PCX Plus implementation began, gradually on an issue-by-issue basis, on December 15, 2003, and is anticipated to become completely operative by December 31, 2004. The Exchange will not be seeking an additional extension of its AOR pilot program provided that the PCX Plus implementation is completed without significant delay.

[11] 115 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–PCX–2004–97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–97 and should be submitted on or before November 18, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.[14] The Commission believes that an extension of the pilot program for an additional six months should allow the Exchange to gradually phase-out the AOR process and to continue to phase-in PCX Plus on an issue-by-issue basis.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that during the last extension of the pilot program, PCX has represented that the AOR pilot program has been operating successfully. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow PCX to continue, without interruption, the existing operation of its AOR pilot.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PCX–2004–97), is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on March 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2874 Filed 10–27–04; 8:45 am]

BILLING CODE 8010–01–P

[13] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] *Id.*

[17] 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4881]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Hero, Hawk, and Open Hand: American Indian Art of the Ancient Midwest and South''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Hero, Hawk, and Open Hand: American Indian Art of the Ancient Midwest and South,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago, Chicago, IL, from on or about November 20, 2004, to on or about January 30, 2005, The Saint Louis Art Museum, Saint Louis, MO, from on or about March 4, 2005, to on or about May 30, 2005; The Smithsonian National Museum of Natural History, Washington, DC, from on or about July 1, 2005, to on or about September 25, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 22, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–24137 Filed 10–27–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–80]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket

number involved and must be received on or before November 17, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2004–18931 by any of the following methods:

- *Web site: http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174 or Susan Lender (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 22, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–18931.

Petitioner: Air Repair, Inc.

Sections of 14 CFR Affected: 14 CFR 45.29(b)(1).

Description of Relief Sought: To allow the petitioner to install registration marks on an AR–9 aircraft (N60537) which are smaller than those required by the regulation.

[FR Doc. 04–24143 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–81]

Petitons for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: SUMMARY:

Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 22, 2004.

Dated: October 22, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2003–16211.

Petitioner: AvCraft Aerospace GmbH.

Section of 14 CFR Affected: 14 CFR 25.1309(c).

Description of Relief Sought/Disposition: To permit operators of the Dornier Model 328–300 aircraft to use Reduced Thrust Takeoff Operations (RTTO) with an indication system that exhibits certain inconsistent flight phase indications in the event of an engine failure below 1000 ft.

Time Limited Partial Grant of Exemption, 02/04/2004, Exemption No. 8237

[FR Doc. 04–24144 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–78]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; correction.

SUMMARY: The FAA published a notice in the **Federal Register** on October 18, 2004, containing a summary of certain dispositions of certain petitions previously received. This document makes a correction to a docket number assigned to Helicorp, Inc.

FOR FURTHER INFORMATION CONTACT: Timothy Adams, telephone (202) 267–8033.

EFFECTIVE DATE: This correction is effective on October 28, 2004.

Correction

In the notice, FR Doc. 04–23256, published on October 18, 2004 (69 FR 61431) on page 61432, in the third column, on the first line, correct the Docket Number from ''FAA–2002–17147'' to read ''FAA–2002–14147.''

Issued in Washington, DC on October 22, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–24142 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–04–19408]

Pipeline Safety: Public Meetings on Pipeline Safety Issues

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; four public meetings.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is sponsoring four public meetings on the following pipeline safety topics: *Enhancing Integrity Management of Gas Distribution Pipelines; Communicating with the Public; Updates on Pipeline Drug and Alcohol Program;* and *Updates on Pipeline Operator Qualification Program Implementation and Standards Development.* The meetings will be held on December 14, 16, and 17, 2004, in Washington, DC.

These meetings will provide detailed review and discussion on the above topics and will provide the public an opportunity to give comments.

ADDRESSES: The meetings are open to all. There is no cost to attend. The meetings will be held at the Marriott Washington, 1221 22nd Street, NW., Washington, DC. The phone number for Marriott reservations is 1–800–228–9290. Reservations by attendees must be received on or before November 22. Priority is given to members of the pipeline safety advisory committees and State pipeline safety representatives for the block of rooms reserved for the Department of Transportation. Any additional information or changes will be posted on the OPS Web page approximately 15 days before the meeting date at *http://ops.dot.gov*.

DATES: The public meetings will be held Tuesday, December 14, Thursday, December 16, and Friday, December 17, 2004. Meetings of the pipeline safety advisory committees are scheduled for December 14 and 15. A separate notice has been prepared for the Committee meetings.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, RSPA/OPS, (202) 366–4431 or Richard Huriaux, RSPA/OPS, (202) 366–4565, regarding the subject matter of this notice.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

SUPPLEMENTARY INFORMATION:

RSPA/OPS invites public participation in four public meetings to be held as follows:

1. Tuesday, December 14—1 p.m. to 5 p.m.—*Communicating with the Public*.
2. Thursday, December 16—8:30 a.m. to 4 p.m.—*Enhancing Integrity Management of Gas Distribution Pipelines*.
3. Thursday, December 16—4 p.m. to 5 p.m.—*Updates on Pipeline Drug and Alcohol Program*.
4. Friday, December 17—8:30 a.m. to 12:30 p.m.—*Updates on Operator Qualification Program Implementation and Standards Development*.

1. Public Meeting: Communicating With the Public

RSPA/OPS will hold a public meeting on *Communicating with the Public* from 1 p.m. to 5 p.m. on Tuesday, December 14.

Incorporating API RP 1162

On June 24, 2004, RSPA/OPS published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (60 FR 35279) to require all pipeline operators to develop and implement public communications programs. The proposed rule requires that these programs be based on the provisions of a recently completed national consensus standard, API Recommended Practice (RP) 1162, *Public Awareness Programs for Pipeline Operators*. RSPA/OPS worked with its State partners and the National Association of Pipeline Safety Representatives (NAPSR) in developing the proposed rule.

At the public meeting on December 14 RSPA/OPS will discuss its analysis of comments received in response to the NPRM. These comments are accessible in Docket No. RSPA–03–15852 on the DOT Dockets Management System (DMS) Web site at *http://dms.dot.gov*.

Numerous comments to the docket on the proposed NPRM raised questions relating to the regulator's use of language in consensus standards that employ the words ''should'' and ''shall''. RSPA/OPS intends to lay out its position on this pivotal issue and the history behind its many previous regulatory actions incorporating national consensus standards. In short, national consensus standards provide a clear consensus on what prudent operators would do to manage the aspect of their business governed by the final standard. Any use of the word ''shall'' means exactly that—the operator shall do as prescribed in the standard. Any use of the word ''should'' places an onus on any operator who deviates from the standard to document and prove the effectiveness of its alternative actions taken to comply with related provisions of the standard. This interpretation of ''should'' enables operators to innovate and seek efficiencies—as long as they can demonstrate that their alternative is at least as effective as the action required by the standard incorporated by reference. This matter will be discussed in detail in the public meeting.

RSPA/OPS will also discuss and solicit comments on its plans to meet its statutory responsibility to review the communications programs of pipeline operators. The United States Senate Appropriations Committee has proposed a budget increase to fund a central review clearinghouse, but that model is contingent on availability of financial resources. Other models for review of communications plans will also be discussed at the public meeting.

Crisis Communication

RSPA/OPS will also discuss ''crisis communications'' procedures used by pipeline operators and government. RSPA/OPS and the pipeline industry agree that all parties involved in pipeline safety should be prepared to adequately respond to a crisis and communicate with the public and other audiences as the crisis unfolds. To promote certain expectations in crisis management performance, the pipeline industry and RSPA/OPS first need to understand current industry and government practices for crisis communications management. This assessment will include Federal, State and local regulators, emergency responders, the public, the media, elected officials, industry organizations and their entities. The specific focus of this assessment is to identify and evaluate current practices for emergency response communications among the identified target groups. This initial assessment will yield the procedures and materials necessary to conduct a case study assessing a pipeline operator's ability to manage crisis communications during a critical event.

Information Grants to Communities

A brief discussion will be held to provide an update on how RSPA/OPS is addressing the Pipeline Safety Improvement Act (PSIA) provisions on this subject.

2. Public Meeting: Enhancing Integrity Management of Gas Distribution Pipelines

RSPA/OPS will hold a public meeting on *Enhancing Integrity Management of Gas Distribution Pipelines*, from 8:30 a.m. to 4 p.m. on Thursday, December 16. The nature of the specific efforts that will be required to develop appropriate guidelines or requirements, and the related milestones, will be determined following the discussions in the public meeting.

The preliminary agenda at this meeting includes briefings on the following topics:

- DOT Inspector General's Report to Congress on Gas Distribution;
- AGF study on Gas Distribution;
- DIGIT (Government & Industry roles);
- NARUC comments on Gas Distribution Safety;
- NAPSR comments on Gas Distribution Safety. This includes a report on State requirements (beyond Federal code) and State program initiatives such as, replacement programs, State gas association initiatives with Public Service Commissions, etc.;

• Differences between Distribution and Transmission regulations;
• Report on Promising Technology (R & D related work on pipeline integrity management);
• Excess Flow Valves; and,
• Panel Discussion on path forward (goals, planning process, work needed, milestones).

Gas Distribution Incidents

Pipeline accidents with significant consequences gathered attention in recent years and prompted pipeline safety program changes. Integrity management rules were promulgated for hazardous liquid pipelines (65 FR 75378; December 1, 2000) and for gas transmission pipelines (68 FR 69778; December 15, 2003). In testimony before the Congress on July 20, 2004, the Office of the Inspector General (OIG) reported that the number of incidents reported on distribution systems has consistently exceeded that on transmission systems. And, the number of fatalities and injuries reported on distribution systems has consistently been much higher than for transmission systems. The prevalence of incidents, particularly those with consequences to people, makes it important that some additional attention be paid to distribution pipeline integrity management. RSPA/OPS agrees the safety issues posed by gas distribution pipelines need to be addressed through appropriate integrity management initiatives.

American Gas Foundation Study

The American Gas Foundation (AGF) commissioned a study of trends in distribution pipeline incidents, as part of an effort to help define what additional safety actions may be necessary. The study included a survey of selected operators. The Distribution Infrastructure Government-Industry Team (DIGIT) was formed to consider the AGF study, and other information, in an attempt to jointly define an approach to distribution pipeline integrity management. DIGIT consists of equal numbers of industry and state regulator representatives, including representation from large/small operators and municipal gas distribution pipeline operators. RSPA/OPS participates in the DIGIT meetings as an observer. We expect DIGIT to complete its review of the AGF study by the end of calendar year 2004.

The decisions on what additional integrity management-related requirements would be appropriate for gas distribution systems will be made by Federal and State regulators following completion of a series of activities or investigations initiated separately from the DIGIT effort. RSPA/OPS has developed an action plan for assuring integrity of gas distribution pipelines.

Differences in Gas Distribution Pipeline Systems

Ensuring the integrity of distribution pipeline systems is different from doing so for transmission pipelines because:
• Most pipe in distribution pipeline systems is small diameter and operates at low pressure. Transmission pipelines are generally large diameter and high pressure.
• Distribution pipeline systems are a more complex network, with frequent branching and interconnections. Transmission pipelines generally run for many miles without such connections.
• Distribution pipeline systems include a range of materials, including a significant amount of plastic pipe. Transmission pipelines are generally constructed of steel.
• Distribution pipelines are usually difficult to take out of service for inspection without interrupting gas service to customers. Transmission pipelines often include loop lines and bypasses that allow individual sections of pipe to be removed from service temporarily.
• Distribution pipeline failures tend to occur as leaks. Gas can migrate underground, accumulating in areas remote from the leak so that fires and explosions occur away from the pipeline. Transmission pipelines, because of their high operating pressure, tend to fail by rupture and the consequences occur on the pipeline.
• State pipeline safety regulators regulate most distribution pipeline systems.

Developing Gas Distribution IM Plan

A plan for assuring integrity of gas distribution pipelines must take these differences into account. Expanding integrity management for distribution systems beyond currently required practices requires a thorough understanding of costs and benefits. As in our development of integrity management (IM) requirements for gas transmission and hazardous liquid pipelines, RSPA/OPS intends to conduct analyses and evaluations to make decisions in the following areas in order to assure that the approach finally developed is effective and not unreasonably burdensome, including:

• Identifying the principal threats to the integrity of distribution pipelines;

• Identifying requirements and practices that currently exist at the State and Federal levels that support management of these threats to integrity;

• Determining whether current requirements are written effectively to create opportunities and incentives for operators to use existing and developing technologies to support management of the integrity of distribution systems;

• Identifying whether opportunities exist for expedited development of new technologies supporting the assessment of gas distribution systems;

• Understanding practices beyond current requirements that are being used by operators and what the results are;

• Understanding whether there are requirements or approaches used by one or more States which are not included in Federal statutes but which have proven effective in managing the integrity of gas distribution systems; and,

• Identifying whether the opportunity exists to codify currently demonstrated effective IM practices in a national consensus standard.

The plan for developing an approach to distribution pipeline integrity management will support RSPA/OPS and State regulators in making these decisions. The result of implementing a plan is not known at the outset. Achieving increased integrity of distribution pipeline systems may involve Federal and/or State rulemaking, development of guidance for adoption by States, publication and promotion of best practices, national consensus standards, other actions, or some combination of these actions.

RSPA/OPS plan includes the elements described in the chart below. The nature of the specific efforts that will be required to develop appropriate guidelines or requirements, and the related milestones, will be determined after consideration of the discussion and comments at the public meeting.

Action	Milestone
Analyze/Evaluate Current Experience, Requirements and Practices	
• Survey States to identify requirements and rograms beyond Federal regulations	September 2004.
○ Regulatory requirements in addition to Federal standards	
○ Programs outside of regulations	

Action	Milestone
• Analyze survey results	October 2004.
○ Develop criteria for grouping States (*e.g.*, common practices, similar environmental conditions)	
○ Develop "models" of state approaches, by group	
• Analyze incident/leak performance by state group, identify statistically significant differences	November 2004.
• Analyze and update incident/leak performance data nationally	December 2004.
• Complete American Gas Foundation (AGF) study	December 2004.
○ Analyze/characterize current safety performance	
○ Identify regulatory and data gaps	
• DIGIT [1] review of AGF study	January 2005.
• Determine State Commission practices currently in-place to assess cost/benefit of distribution company initiatives, including cost-recovery approaches.	TBD.
Establish Mechanisms for Federal/State Management of the Plan	
• Conference call with NAPSR Board	October 2004.
• Meeting of State Commissioners, RSPA/OPS, and OIG (optional)	November 2004.
• Establish State/Federal oversight team	November 2004.
○ Identify industry play role	
• Increase RSPA/OPS staffing for State program coordination	2005.
Begin Public Dialog	
• Facilitate a series of Public Meetings	December 16, 2004.
• Identify stakeholders interested in this process	TBD.
Conduct Needed Research and Development	
• Complete ongoing research on application of direct assessment in distribution environments	TBD.
• Identify means to focus integrity management	TBD.
• Identify other R&D needs	February 2005.
• Collect data needed to fill identified gaps	TBD.
Develop and Implement Approach to Assure Distribution Integrity	
• Identify technical elements applicable to distribution	TBD.
○ Review current IM rules for applicable elements	
○ Consider effect of new actions (*e.g.*, excess flow valves), including cost/benefit of these actions	
• Identify need for new/revised standards and contact consensus standards organizations concerning new/revised standard.	TBD.
• Select appropriate regulatory approach (not necessarily mutually exclusive)	TBD.
○ Model regulations for state adoption	
○ Pilot programs	
○ Federal standard, possibly including options	
○ Guidelines	
○ Changes to state grant programs; incentives	
○ "Best Practices"	
• Develop selected approach	TBD.
• Evaluate potential for cost recovery through State Commissions	TBD.

[1] Distribution Infrastructure Government-Industry Team, a committee consisting of State pipeline regulators and pipeline operators, with RSPA/OPS participating as an observer; formed to help oversee the AGF study.

3. Public Meeting: Updates to Pipeline Drug and Alcohol Program

RSPA/OPS will hold a public meeting on *Updates on Pipeline Drug and Alcohol Program* from 4 p.m. to 5 p.m. on Thursday, December 16.

RSPA is considering a policy change. In 1993, RSPA issued a final rule requiring annual drug testing reports and ultimately concluded, based on industry comments, that "requiring submission of contractor drug testing data by operators would result in major problems such as duplicative reporting and inaccurate data." At that time, RSPA indicated that the issue of collecting contractor testing data would be evaluated in the future. This issue was presented for discussion in a meeting of the technical pipeline safety advisory committees held in February 2004. Since that time, RSPA/OPS has examined statistical data provided by two large pipeline industry consortiums.

A public meeting will be conducted to provide an updated overview on the issue of collecting contractor testing data. In considering this policy, we need to explore possible methods to achieve this goal. Specifically, we are soliciting suggestions and public comment on collection methodologies that are cost effective and the least burdensome.

4. Public Meeting: Update on Pipeline Operator Qualification Program Implementation and Standards Development

RSPA/OPS will hold a public meeting on *Updates on Pipeline Operator Qualification Program Implementation and Standards Development* from 8:30 a.m. to 12.30 p.m. on Friday, December 17.

The preliminary agenda includes briefings on the following topics:

1. RSPA/OPS OQ Initiatives

• The developmental status of the ASME B31Q standard to address the need for a long term, holistic, technically-based resolution of 13 open items identified by the general public, the industry and the regulators. The 13 open items include:

1. The Distinction between Maintenance and New Construction;

2. The treatment of emergency response;

3. Incorporation of Additional Covered Tasks (*e.g.*, excavation);

4. Justification of Re-evaluation intervals;

5. Reference to Training;

6. Inspection of the Approaches through which the Operator Expects to Achieve Improvement;

7. Direct observation of Non-Qualified Individuals;

8. Abnormal Operating Conditions;

9. Qualified Person Contribution to Incidents;

10. Acceptable Evaluation Methods (KSAs);

11. Extent of Documentation;

12. Noteworthy Practices; and

13. Acceptance Criteria for Small Operators.

2. RSPA/OPS Inspectional Findings

• What inspectors are discovering from their comprehensive inspections when utilizing the OQ protocol format.

3. RSPA/OPS Congressional Reporting

• What data RSPA/OPS is collecting, tabulating and analyzing for an OQ status and results report to Congress.

Congressional Mandates

The final rule on Pipeline Operator Qualification (OQ) on August 27, 1999 (64 FR 46853), required pipeline operators to ensure that individuals working on gas or hazardous liquid pipeline facilities have the knowledge and skills to competently perform covered tasks and to be able to recognize and react to abnormal operating conditions that may occur while performing covered tasks.

The Pipeline Safety Improvement Act (PSIA) of 2002 (Public Law 107–355; December 17, 2002), expanded OQ statutory mandates to require pipeline operators to: (1) Establish ''appropriate'' levels of training and document individual training; (2) establish creditable and rational bases for subsequent evaluations; (3) eliminate performance observation as the sole means of evaluation for requalification (unless authorized by RSPA/OPS); and (4) notify RSPA/OPS when the operator ''significantly modifies'' an operator OQ plan or evaluation program after it was inspected by an authorized state or Federal pipeline inspector. In addition, Congress required RSPA/OPS to report on the status and results of its OQ initiatives. A public meeting on this matter was held during a joint technical pipeline safety standards committee session on February 4, 2004, in Dulles, Virginia.

Improvements in OQ Program Oversight

RSPA/OPS and State agencies have (1) Developed OQ protocols as standards for inspectors to evaluate program adequacy; (2) conducted and are still conducting comprehensive inspections and data collection on OQ programs; (3) provided more consistent and thorough inspector OQ training; (4) addressed small pipeline operator OQ program issues; (5) worked on national consensus standards committees; and (6) provided Internet-based informational resources for operators and the general public.

Issued in Washington, DC, on October 25, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–24149 Filed 10–27–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the ''Fund'') within the Department of the Treasury is soliciting comments concerning the Bank Enterprise Award (''BEA'') Program Application.

DATES: Written comments should be received on or before December 27, 2004, to be assured of consideration.

ADDRESSES: Direct all comments to Margaret Nilson, BEA Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The BEA Program application may be obtained from the BEA page of the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Margaret Nilson, BEA Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–6355. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Bank Enterprise Award Program Application.

OMB Number: 1559–0005.

Abstract: The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within distressed communities and provide financial assistance to community development financial institutions through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The Fund will make awards through the BEA Program to insured depository institutions, based upon such institutions' completion of certain qualified activities, as reported in the application. The application will solicit information concerning: applicants' eligibility to participate in the BEA Program; the character and quantity (value) of applicants' activities, and the extent to which such activities may be qualified activities; and appropriate supporting documentation. The questions that the application contains, and the information generated thereby, will enable the Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for a BEA Program award.

Current Actions: Extension of currently approved collection.

Type of Review: Extension.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 65.

Estimated Annual Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 975 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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 Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund'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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321; 12 CFR part 1806.

Dated: October 19, 2004.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 04–24076 Filed 10–27–04; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5300 and Schedule Q (Form 5300)

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 Form 5300, Application for Determination for Employee Benefit Plan, and Schedule Q (Form 5300), Elective Determination Requests.

DATES: Written comments should be received on or before December 27, 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 forms and instructions 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: Application for Determination for Employee Benefit Plan (Form 5300), and Elective Determination Requests (Schedule Q (Form 5300)).

OMB Number: 1545–0197.

Form Number: Form 5300 and Schedule Q (Form 5300).

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The information requested on Schedule Q (Form 5300) relates to the manner in which the plan satisfies certain qualification requirements concerning minimum participation, coverage, and nondiscrimination.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 185,000.

Estimated Time Per Respondent: 43 hours, 6 minutes.

Estimated Total Annual Burden Hours: 7,972,750.

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 22, 2004.

Joe Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–24136 Filed 10–27–04; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, November 18, 2004, 9:15 a.m.–4:30 p.m.

LOCATION: 1200 17th Street, NW., Suite 200—Conference Room, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: November 2004 Board Meeting; Approval of Minutes of the One Hundred Sixteenth Meeting (September 17, 2004) of the Board of Directors; Chairman's Report; President's Report; Program Reports; Organizational Review; Grand Recommendation Approval; Selection of NPEC topic; Other General Issues.

CONTACT: Ms. Tessie Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: October 22, 2004.

Harriet Hentges,

Executive Vice President United States Institute of Peace.

[FR Doc. 04–24178 Filed 10–26–04; 10:55 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Sciences Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. as indicated below

Subcommittee for	Date(s)	Location
Surgery—A	Nov 8, 2004	St. Gregory Hotel.
Endocrinology—A	Nov 8–9, 2004	Governor's House.
Nephrology	Nov 15–16, 2004	Governor's House.

Subcommittee for	Date(s)	Location
Neurobiology—E	Nov 18, 2004	Topaz Hotel.
Gastroenterology	Nov 18–19, 2004	Hotel Helix.
Cardiovascular Studies—B	Nov 19, 2004	Washington Marriott.
General Medical Science	Nov 19, 2004	Washington Marriott.
Neurobiology—D	Nov 19, 2004	Hotel Washington.
Infectious Diseases—A	Nov 22, 2004	Hotel Lombardy.
Surgery—B	Nov 22, 2004	Hotel Lombardy.
Neurobiology—B	Nov 29, 2004	Washington Marriott.
Immunology—A	Nov 30, 2004	Hotel Lombardy.
Mental Hlth & Behav Sciences—A	Dec 1, 2004	Residence Inn.
Mental Hlth & Behav Sciences—B	Dec 2, 2004	Hotel Lombardy.
Neurobiology—C	Dec 2–3, 2004	Washington Marriott.
Oncology—B	Dec 2–3, 2004	Hotel Washington.
Clinical Research Program	Dec 3, 2004	Washington Marriott.
Endocrinology—B	Dec 3, 2004	Governor's House.
Cardiovascular Studies—A	Dec 6–7, 2004	St. Gregory Hotel.
Immunology—B	Dec 6–7, 2004	Hotel Rouge.
Neurobiology—A	Dec 9–10, 2004	Holiday Inn Central.
Aging and Clinical Geriatrics	Dec 10, 2004	Hotel Lombardy.
Oncology—A	Dec 13–14, 2004	Residence Inn.
Respiration	Dec 13–14, 2004	Governor's House.
Hematology	Dec 16, 2004	Hotel Lombardy.
Infectious Diseases—B	Dec 16–17, 2004	Washington Marriott.

The addresses of the hotels are:
Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC;
Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC;
Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC;
Hotel Lombardy, 2019 Pensylvania Avenue, NW., Washington, DC;
Hotel Rouge, 1315—16th Street, NW., Washington, DC;
Hotel Washington, 515—15th Street, NW., Washington, DC;
Residence Inn (Thomas Circle), 1199 Vermont Avenue, NW., Washington, DC;
St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC;
Topaz Hotel, 1733 N Street, NW., Washington, DC;
Washington Marriott, 1221—22nd Street, NW., Washington, DC.

These subcommittee meetings are for the purpose of evaluating the scientific merit of research conducted in each speciality by Department of Veterans Affairs (VA) investigations working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review (121F), Department of Veterans Affairs, Washington, DC, (202) 254–0288.

Dated: October 14, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–24114 Filed 10–27–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of new system of records—VA VetBiz Assistance Program Pages—VA.

SUMMARY: The Privacy Act of 1974, 5 U.S.C. 522a(e), requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''VA VetBiz Assistance Program Pages—VA'' (132VA00VE).

DATES: Comments on the establishment of this new system of records must be received no later than November 29, 2004. If no public comment is received, the new system will become effective November 29, 2004.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov*. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Wegner (00VE), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone number (202) 303–3260.

SUPPLEMENTARY INFORMATION: The Center for Veterans Enterprise (CVE)

provides numerous services for veterans and service-disabled veterans who seek to open or expand a business. The CVE staff coordinates the tasks required of the U.S. Department of Veterans Affairs by several Federal laws, including:

- Pub. L. 108–183 (December 2003), the Veterans Benefits Act of 2003, Sections 301, 305, 308.
- Pub. L. 106–554 (December 2000), Sections 803 and 808.
- Pub. L. 106–50 (August 1999), the Veterans Entrepreneurship and Small Business Development Act of 1999.
- Pub. L. 105–135 (December 1997), Title VII, Service Disabled Veterans Program.
- Pub. L. 93–237 (January 1974), ''Special Consideration for Veterans''.

Public Law 106–50, Section 302, Entrepreneurial Assistance, subsection (5) requires VA to support the ''establishment of an information clearinghouse to collect and distribute information, including electronic means, on the assistance programs of Federal, state, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mailing and e-mail addresses, and contracting and sub-contracting opportunities.''

The parts of the Veterans Benefits Act of 2003 (Public Law 108–183) that pertain to veteran entrepreneurship are contained in Title III—Education Benefits, Employment Provisions, and Related Matters. They are as follows:

- Section 301—Expand the Montgomery GI Bill program by authorizing educational assistance for on-job training in certain self-employment training programs.
- Section 305—Authorize the use of VA education benefits to pay for non-degree/non-credit entrepreneurship courses at approved institutions:
  - Small Business Development Centers, and
  - National Veterans Business Development Corporation (also known as Veterans Corporation).
- Section 308—Furnish Federal agencies discretionary authority to:
  - Restrict certain contracts to disabled veteran-owned small businesses if at least two such concerns are qualified to bid on the contract, and
  - Create ''sole-source'' contracts for disabled veteran-owned small businesses—up to $5 million for manufacturing contract awards and up to $3 million for non-manufacturing contract awards.

As such, a Web-based application is needed to allow Governmental and support sector organizations to ''register'' their services. This clearinghouse will allow any user to search for business support services at the Federal, State, and local government levels and private providers in their respective category of business development, management, financial, technical or procurement assistance. The site must allow support organizations to update their business information as well as give the Department the ability to upload data from other sources in an effort to populate the proposed database. Contact information must also be kept and a means to extract this information to satisfy the Department's need to send out information is also required.

This new system of records, known as the VA VetBiz Assistance Program Pages (APP)—VA, will be used to maintain and access an automated database containing the information on veteran-owned businesses resources set forth in the law (section 302, paragraph (5) and section 604, paragraph (b)). Because some information may be retrieved by the name or other personal identifiers of individuals acting in an entrepreneurial capacity, such as a sole proprietor of a small business, VA is adopting this system of records.

The information in this system will be maintained in electronic form. The information in these records will be available to government agencies, companies, and the general public via the Internet.

A ''Report of Intention to Publish a **Federal Register** Notice of a New System of Records'' and an advance copy of the new system notice have been sent to the appropriate Congressional Committees, and the Office of Management and Budget (OMB), as required by provisions of the Privacy Act, 5 U.S.C. 522a, and guidelines issued by OMB, 61 FR 6428 (Feb. 20, 1996).

Approved: October 8, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

132VA00VE

SYSTEM NAME:

VA VetBiz Assistance Program Pages—VA (132VA00VE).

SYSTEM LOCATION:

Records are maintained at the Center for Veterans Enterprise's office in VA Headquarters, Washington, DC. VA's Information Services Center, 1335 East West Highway, Silver Spring, Maryland 20910, maintains the computerized database and Web site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will cover programs of Federal, State, and local governments, and private sector organizations and companies offering business or business assistance services to veteran entrepreneurs that wish to be a part of the information clearinghouse.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records will contain data on the assistance programs of Federal, state, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mailing and e-mail addresses, and contracting and subcontracting opportunities available to veteran entrepreneurs. The data will come from both governments and private sector organizations who have contacted the Center for Veterans Enterprise, registered their products or services online in the database, or have been extracted from e-government databases to which the companies have voluntarily submitted the data. The records may include business addresses and other contact information, information concerning products or services offered, and information pertaining to the business, such as federal contracts, and certifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 106–50, as amended.

PURPOSE(S):

1. VA personnel will access the system to find resources available to veteran entrepreneurs and to register those resources that they provide. They may also utilize the database to counsel and assist veteran entrepreneurs in starting a small business or expanding an existing small business.

2. The Center for Veterans Enterprise will use the records and reports derived from the database to manage their responsibilities under the Veterans Entrepreneurship and Small Business Development Act of 1999.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Federal, State, and local government personnel will access the system to find resources available to veteran entrepreneurs and to register those resources that they provide. They may also utilize the database to counsel and assist veteran entrepreneurs in starting a small business or expanding an existing small business.

2. The general public, including private sector companies and corporate entities, will access the system, via Internet, to review the information,

register those resources that they provide, and to locate potential resources for veteran entrepreneurs.

COMPATIBILITY OF THE PROPOSED ROUTINE USES:

The Privacy Act permits disclosure of information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information is collected. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The VetBiz APP will be stored in an automated, computerized database. The system will operate on servers located at VA's Information Services Center, 1335 East West Highway, Silver Spring, Maryland 20910. Data backups will reside on appropriate media according to normal system backup plans. The system will be managed by the Center for Veterans Enterprise in VA Headquarters, Washington, DC.

RETRIEVABILITY:

Automated records may be retrieved by:

1. Organization Name.
2. Contact Name.
3. E-mail Address.
4. Web Address.
5. Area Code and Phone Number.
6. Zip Code.
7. County Code (NaCO).
8. State(s).
9. *Type of Organization:* Government (Federal; State; County; Municipal; Other); Nongovernmental Organization; Commercial.
10. *Type of Assistance:* (paperwork packaging; grants/loans; procurement assistance; management/technical assistance; mentoring/incubator; contract opportunities; other).
11. Service Area Limits (if any).
12. Service limited to Veterans.
13. Fees.
14. Organization Funding Limits: (none; term—funding expires on a specific date).
15. Year Established.
16. Full-time/part-time.
17. Days and Hours of Service.
18. Other Professional Staff Available.

SAFEGUARDS:

Read access to the system is via Internet access. VA Information Service Center and CVE personnel will have access to the system via VA Intranet and local connections for management and maintenance purposes and tasks.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedule No. 20, Electronic Records.

SYSTEM MANAGER:

Deputy Director, Center for Veterans Enterprise (00VE), 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the Deputy Director, Center for Veterans Enterprise (00VE), 810 Vermont Avenue, NW., Washington, DC 20420.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records may access the records via the Internet, or submit a written request to the system manager.

CONTESTING RECORD PROCEDURES:

An individual who wishes to contest records maintained under his or her name or other personal identifier may write or call the system manager. VA's rules for accessing records and contesting contents and appealing initial agency determinations are published in regulations set forth in the Code of Federal Regulations. *See* 38 CFR 1.577, 1.578.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from the following sources:

a. Information voluntarily submitted by Federal, State, and local governments;

b. Information voluntarily submitted by the private sector; and

c. Information extracted from other business and resource databases.

[FR Doc. 04–24078 Filed 10–27–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Blood Donor Information—VA'' (04VA115) as set forth in the **Federal Register,** 40 FR 38095, and last amended in the **Federal Register**, 66 FR 20860 (Apr. 25, 2001). VA is amending the system by revising the Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than November 29, 2004. If no public comment is received, the amended system will become effective November 29, 2004.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION: The purpose for the system of records is to maintain vital blood donor information of individuals who have donated blood to a VHA health care facility, blood bank, government or to private agencies for blood that is to be issued for patient care under routine or emergency conditions. Information such as donor name, social security number, date of donation, type of donation, type of components produced by the donation, mandated tests results, and disposition of the blood or blood component is gathered in order to track the donor medical history, donation interval(s), results of donor testing, report positive or abnormal test results, and blood or

blood components from registration through the final disposition of blood or blood components produced from the donation.

A record of the individual to whom the blood or blood component was transfused and the medical facility where the product was transfused and/or stored is also maintained.

The Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses are amended as described below.

○ Routine use number three (3) has been amended in its entirety. VA must be able to disclose information within its possession on its own initiative that pertains to a violation of law to the appropriate authorities in order for them to investigate and enforce those laws. VA may disclose the names and home addresses of veterans and their dependents only to Federal entities with law enforcement responsibilities under 38 U.S.C. 5701(a) and (f). Accordingly, VA has so limited this routine use as follows:

VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

• Former routine use four (4) has been deleted from this system of records. Upon review, it has been determined that this routine use is no longer applicable to this system and, as such, is no longer required.

• Former routine uses five (5) through eight (8) have been renumbered as routine uses four (4) through seven (7).

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs or will use the information to provide a benefit to VA, or disclosure is required by law or would permit VA to notify appropriate entities about conduct of individuals in this system of records.

Under section 264, subtitle F of title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR parts 160 and 164. VHA may not disclose individually-identifiable health information (as defined in HIPAA, 42 U.S.C. 1320(d)(6), and Privacy Rule, 45 CFR 164.501) pursuant to a routine use unless either: (a) the disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

The Report of Intent to Publish an Amended System of Record Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB, 61 FR 6428 (Feb. 20, 1996).

Approved: October 8, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

04VA115

SYSTEM NAME:

Blood Donor Information—VA.

SYSTEM LOCATION:

Blood Donor records are maintained at each of the Department of Veterans Affairs (VA) health care facilities. Addresses are listed in VA Appendix I of the biennial publication of Privacy Act Issuances.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have donated blood to a Veterans Health Administration (VHA) health care facility, blood bank, government or private agencies to be issued for patient care under routine or emergency conditions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Blood donor records contain sufficient information (*i.e.*, donor name, social security number, date of donation, type of donation, type of components produced by the donation, mandated tests results, and disposition of the blood or blood component) to provide a mechanism to track a donated blood product from the time of donor registration through the final disposition of each component prepared from that donation. VA maintains a record of the individual to whom the blood or blood component was transfused and the medical facility where the product was transfused and/or stored.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

1. Title 38, United States Code, sections 501(a) and 501(b).
2. Title 21, Code of Federal Regulations, parts 200–299 and parts 600–680.
3. Title 42, Code of Federal Regulations, section 493.1107.

PURPOSE(S):

The information and records are used to track the donor medical history, donation interval(s), results of donor testing, report positive or abnormal test results, and blood and/or blood components produced from the donation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. Disclosure may be made to answer requests for information from Federal, State, local, and tribal medical facilities regarding the source from which blood was received. Such requests may be initiated by a qualified medical practitioner in the event that a donor's or patient's medical condition warrants it.

2. Disclosure may be made of blood availability, location, quantity on hand, and blood type for use by the area donor collection coordinators to answer and fill requests from health care facilities in need of type-specific blood.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of Title 44 United States Code.

6. A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of title 44 United States Code.

7. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, magnetic tape, disk.

RETRIEVABILITY:

1. All VA blood donor manual records are indexed by name and social security number of donor, cross-indexed by blood type.

2. Automated records are indexed by name, social security number, blood type, antibodies and date of last donation.

SAFEGUARDS:

1. Access to VA working space and medical record storage areas is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service. Employee file records and file records of public figures or otherwise sensitive medical record files are stored in separate locked files. Strict control measures are enforced to ensure that disclosure is limited to a ''need to know'' basis.

2. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files are limited to VA employees whose official duties warrant access to those files. The system recognizes authorized employees by a series of individually-unique passwords/codes, and the employees are limited to only that information in the file, which is needed in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the record disposition authority approved by the Archivist of the United States, National Archives and Records Administration under the National Archives Job No. N1–15–02–04.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Consultant, Diagnostic Services, Strategic Healthcare Group (SHG) (115), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals seeking information concerning the existence and/or content of a blood donor information record pertaining to themselves must submit a written request or apply in person to the VA health care facility where the donation occurred. All inquiries must reasonably identify the portion of the blood donor information record desired and the approximate date(s) that service was provided. Additionally, inquiries should include the individual's full name, social security number, and home address at the time of medical service, if known.

RECORD ACCESS PROCEDURES:

Blood donors, patients of VA medical care facilities or duly authorized representatives seeking information regarding access to or who are contesting VA health facility records may write, call or visit the VHA facility where medical service was provided or volunteered.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

1. The blood donor.
2. Private hospitals and local blood banks.
3. Private physicians.
4. Non-VA Laboratories.

[FR Doc. 04–24079 Filed 10–27–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 69, No. 208

Thursday, October 28, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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

Correction

In notice document 04–23681 beginning on page 62029 in the issue of Friday, October 22, 2004, make the following correction:

On page 62029, in the first column, under the **SUMMARY** heading, in the second line from the bottom, ''October 14, 2002'' should read ''October 16, 2002.''

[FR Doc. C4–23681 Filed 10–27–04; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50502; File No. SR–NASD–2004–149]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Access Fees for Nasdaq's Brut Facility

October 7, 2004.

Correction

In notice document E4–2655 beginning on page 61275 in the issue of Friday, October 15, 2004 make the following correction:

On page 61275, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. Z4–2655 Filed 10–27–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
October 28, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mariana Fruit Bat and Guam Micronesian Kingfisher on Guam and the Mariana Crow on Guam and in the Commonwealth of the Northern Mariana Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1019–AI25

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mariana Fruit Bat and Guam Micronesian Kingfisher on Guam and the Mariana Crow on Guam and in the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Mariana fruit bat (*Pteropus mariannus mariannus*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Mariana crow (*Corvus kubaryi*) pursuant to the Endangered Species Act, as amended (Act or ESA). We are designating approximately 376 acres (ac) (152 hectares (ha)) on the island of Guam for the Mariana fruit bat and the Guam Micronesian kingfisher. For the Mariana crow, we are designating approximately 376 ac (152 ha) on the island of Guam and approximately 6,033 ac (2,442 ha) on the island of Rota in the Commonwealth of the Northern Mariana Islands (CNMI). On Guam, the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher critical habitat unit boundaries are identical. On Rota, critical habitat is designated only for the Mariana crow. Counting identical or overlapping units only once for all three species, we are designating approximately 6,409 ac (2,594 ha) on Guam and Rota.

DATES: This rule becomes effective November 29, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850. Copies of the final rule, addendum to the economic analysis, and draft economic analysis are available by writing to the above address or by connecting to the Service Internet Web site at *http://pacificislands.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Gina Shultz, Assistant Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850 (telephone: 808/792–9400; facsimile: 808/792–9581).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species (36 percent) of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National

Environmental Policy Act, are all part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

The Territory of Guam (Guam) is the largest and southernmost of the 16 islands in the Mariana archipelago. Guam is located at 13°30′ N and 145° E and is approximately 30 miles (mi) (49 kilometers (km)) long and 4 to 9 mi (7 to 15 km) wide. Rota is the fourth largest island in the Mariana archipelago and is located 30 mi (49 km) north of Guam at 14°10′ N and 145° E. The island is approximately 11 mi (18 km) long and 2.5 to 4 mi (4 to 7 km) wide. We provided a detailed physical description for the islands of Guam and Rota in the proposed critical habitat designation (67 FR 63738).

Taxonomy, Life History, Distribution, Habitat, and Threats

Mariana Fruit Bat (or Fanihi)

This species is a medium-sized fruit bat that historically inhabited all of the major islands in the Mariana archipelago. At present, only the Guam population of Mariana fruit bat is listed as endangered. A proposed rule to reclassify the Guam population of the species as threatened and also list the population in the CNMI as threatened was published on March 26, 1998 (63 FR 14641). The Mariana fruit bat typically roosts in colonies in native forest during the day and forages widely at night on nectar, fruit, and leaves (Wiles 1983). On Guam, the Mariana fruit bat was historically found throughout native forests. However, by 1995, the island population had been reduced to between 300 and 500 and was restricted primarily to forest on the northern tip of the island (Wiles *et al.* 1995), although there are occasional reports of bats from southern Guam around Fena Reservoir (Morton and Wiles 2002). Illegal hunting is believed to be one of the major causes of decline in this species, but predation by the brown treesnake (*Boiga irregularis*) also may be an important limiting factor (Wiles 1987). For additional information on the Mariana fruit bat and threats to the species, the reader is referred to the critical habitat proposed rule (67 FR 63738, October 15, 2002).

Mariana Crow (or Aga)

The Mariana crow is a small, black crow endemic to the islands of Guam and Rota. The Mariana crow is omnivorous and typically nests in native forest (USFWS in prep.). On Guam, the crow historically was widely distributed in forest habitats, but densities were highest in limestone forests and lowest in grasslands and areas with human settlement (Jenkins 1983; Michael 1987). Similar to other Guam forest birds, the crow disappeared from most of the island with the spread of the brown treesnake and was restricted to the northern cliff forests by the mid 1970s. The population on Guam now numbers 12 birds, 10 of which were translocated from Rota or mainland zoos (Aguon 2002). On Rota, Mariana crows were considered relatively common and widely distributed in 1976 (Pratt *et al.* 1979). The first island-wide survey of crows on Rota in 1982 estimated a population of 1,318 individuals (Engbring *et al.* 1986). Crows still are distributed widely on Rota (Morton *et al.* 1999), but results of several surveys indicate that the crow population has declined since the early 1980s. The primary factors in the decline of crows on Rota are uncertain; however, habitat loss and degradation, human persecution, and predation by introduced rats may be factors (USFWS in prep.). For additional information on the Mariana crow and threats to the species the reader is referred to the critical habitat proposed rule (67 FR 63738, October 15, 2002).

Guam Micronesian Kingfisher (or Sihek)

The Guam Micronesian kingfisher is a forest-dwelling kingfisher endemic to Guam. The Guam Micronesian kingfisher preys on insects and small vertebrates and nests in cavities excavated in soft, rotten wood (Jenkins 1983; Marshall 1989). The Guam subspecies was common throughout Guam as recently as 1945 (Marshall 1949), and was found throughout most forest types (Jenkins 1983). Up to 3,000 birds were recorded in 1981 (Engbring and Ramsey 1984), but the kingfisher declined rapidly and now is extinct in the wild. However, a captive population of 63 birds has been established and is maintained at 11 zoos in the mainland United States and by the Guam Division of Aquatic and Wildlife Resources (B. Bahner, National Zoological Association, *in litt.* 2003). The primary factor in the decline of the Guam Micronesian kingfisher was predation by the introduced brown treesnake (Savidge 1986, 1987). For additional information on the Guam Micronesian kingfisher and threats to the species the reader is referred to the critical habitat proposed rule (67 FR 63738, October 15, 2002).

Previous Federal Action

On October 15, 2002, we published a proposed rule to designate critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher (67 FR 63738). In that proposed rule, we included a detailed summary of the previous Federal actions completed prior to the publication of the proposal. The proposed critical habitat consisted of approximately 24,803 ac (10,037 ha) in two units on the island of Guam for the Mariana fruit bat and Guam Micronesian kingfisher. For the Mariana crow, we proposed designating approximately 23,004 ac (9,309 ha) in two units on the island of Guam and approximately 6,084 ac (2,462 ha) in one unit on the island of Rota in the CNMI. We determined that designation of critical habitat would not be prudent for the little Mariana fruit bat (*Pteropus tokudae*), Guam broadbill (*Myiagra freycineti*), and Guam bridled white-eye (*Zosterops conspicillatus conspicillatus*) because all three species likely are extinct. Also, on February 23, 2004, we published a final rule delisting the Guam broadbill due to extinction (69 FR 8116). In the proposed rule, we included a detailed summary of the previous Federal actions completed prior to publication of the proposal. We now provide updated information on the actions we completed since the proposed critical habitat designation.

On October 18, 2002, we mailed the proposed rule and a fact sheet to all interested parties. The public comment period was open for 60 days until December 15, 2002. On October 23, 2002, we held a public meeting on Guam at the Tamuning Community Center to provide information and promote discussion about critical habitat designation. The meeting was attended by 53 people, not including Service staff. On October 24, 2002, we also held a public meeting on Rota at the Rota Resort and Country Club. The meeting was attended by 6 people, not including Service staff. On November 6, 2002, we held a public hearing on Rota at the Rota Resort and Country Club. The hearing was attended by 12 people, and 8 people gave oral testimony. On November 7, 2002, we held a public hearing on Guam in Tumon at the Outrigger Guam Resort. This hearing was attended by 50 people, and 20 people presented oral testimony. On December 5, 2002, we published a notice in the **Federal Register** and issued a press release announcing extension of the public comment period and availability of the draft economic analysis for the proposed designation of

critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher (67 FR 72407). The **Federal Register** notice was mailed to interested parties on December 6, 2002. The comment period was open for an additional 30 days until January 6, 2003. On January 14, 2003, the Service met with a delegation from the Mariana Public Lands Authority (CNMI) to discuss concerns about critical habitat. On January 28, 2003, we published a notice to reopen the comment period until February 18, 2003, due to hardships caused by Supertyphoon Pongsona on Guam and Rota (68 FR 4159). The **Federal Register** notice was mailed to all interested parties on the day of publication.

On May 30, 2003, the Government of Guam filed a motion to extend the deadline for publication of the final rule to allow time to develop an alternative to critical habitat designation on Guam. The Government of Guam stated that they did not have adequate time to develop these alternatives due to a recent change in administration and hardships encountered as a result of Typhoon Chataan and Supertyphoon Pongsona. On June 13, 2003, the Guam District Court extended the deadline for publication ''indefinitely'' and set a status conference for October 7, 2003. On June 23, 2003, the Plaintiffs appealed the district court's June 13, 2003, order to the 9th Circuit. On October 7, 2003, the Guam District Court held a status conference in which the Government of Guam requested a continuance of one month. On October 16, 2003, the Guam District Court denied the request for further continuance and ruled that it would take no further action while the case was on appeal. The Plaintiffs withdrew their appeal, and on January 7, 2004, the U.S. Court of Appeals for the Ninth Circuit dismissed the appeal and returned the case to the Guam District Court.

In March and April 2004, a joint stipulation and order to finalize the critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher were agreed to and approved by the Guam District Court. The Government of Guam submitted their proposed alternative to critical habitat to the Service on April 5, 2004. On June 2, 2004, we published a notice in the **Federal Register** reopening the comment period on the proposed rule until July 19, 2004, to allow interested parties additional time to consider and comment on the Government of Guam's proposal (69 FR 31073).

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary (16 U.S.C. 1532 (3)).

Critical habitat receives protection under section 7 of the Act which requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' As a result of Federal appeals court decisions ruling this regulation invalid, we are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat.

In order to qualify for a critical habitat designation, the area must be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.,* areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''[t]he Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act, as amended under the National Defense Authorization Act (Public Law No: 108–136), requires that we take into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information could be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Critical habitat designations do not signal that habitat outside the designation is unimportant to the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some

cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to identify areas that contain the physical and biological features that are essential for the conservation of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow. This information included: Peer-reviewed scientific publications (*e.g.* Baker 1951; Jenkins 1983; Wiles *et al.* 1995; National Research Council (NRC) 1997); published and draft revised recovery plans (USFWS 1990a, 1990b, 2004a, in prep); the final listing rule (49 FR 33881); unpublished reports by the Guam Division of Aquatic and Wildlife Resources (GDAWR), CNMI Division of Fish and Wildlife (DFW), and the Service (*e.g.,* Wiles 1982a; Engbring and Ramsey 1984; Morton 1996; Morton *et al.* 1999); aerial photographs and satellite imagery of Guam and Rota; personal communications with scientists and land managers familiar with the species and habitats; and comments received during public comment periods and in response to critical habitat outreach packages. Specific information we used from these sources includes estimates of historic and current distribution, abundance, and territory sizes for the three species, as well as data on resource and habitat requirements. From recovery plans, we considered the recovery objectives and the assessments of the habitat necessary to meet these objectives, as well as life history information.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such features are termed ''primary constituent elements'' and include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals and other nutritional or physiological requirements; cover or shelter; sites for nesting and rearing of offspring; and habitats that are protected from disturbance and are representative of the historical, geographical and ecological distributions of the species.

The primary constituent elements for the bat and both of the birds can be found in limestone, secondary, ravine, swamp, agricultural, and coastal forests on Guam and Rota that exhibit the biotic and structural characteristics necessary for foraging, sheltering, roosting, nesting, and rearing of young of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow on Guam, and for these same life functions of the crow on Rota. Guam and Rota experience a high frequency of severe storms, and these regularly and significantly alter forest structure (NRC 1997). Therefore, sufficient habitat area is necessary to absorb the variable impacts of these natural disturbances and still maintain the integrity of the primary constituent elements to support fruit bat, kingfisher, and crow populations. Specific details of primary constituent elements for each species are described below.

Mariana fruit bat: This species feeds on a variety of plant material but is primarily frugivorous (Wiles and Fujita 1992). Specifically, Mariana fruit bats forage on the fruit of at least 28 plant species, the flowers of 15 species, and the leaves of 2 plant species (Wiles and Fujita 1992). Some of the plants used for foraging include *Artocarpus* spp. (breadfruit), *Carica papaya* (papaya), *Cycas circinalis* (fadang), *Ficus* spp. (figs), *Pandanus tectorius* (kafu), *Cocos nucifera* (coconut), and *Terminalia catappa* (talisai). Many of these plant species are found in a variety of forested habitats on Guam including limestone, ravine, coastal, and secondary forests (Stone 1970; Raulerson and Rhinehart 1991).

During the day, Mariana fruit bats roost in groups or colonies and occasionally alone (Wiles 1987; Pierson and Rainey 1992). These roost sites are an important aspect of their biology because they are used for sleeping, grooming, breeding, and intra-specific interactions (USFWS 1990a). Published reports of roost sites on Guam indicate these sites occur in mature limestone forest and are found within 328 ft (100 m) of clifflines that are 260 to 590 ft (80 to 180 m) tall (USFWS 1990a). On Guam, Mariana fruit bats prefer to roost in mature fig and *Mammea odorata* (chopak) trees but will also roost in other tree species such as *Casuarina equisetifolia* (gago), *Macaranga thompsonii* (pengua), *Guettarda speciosa* (panao), and *Neisosperma oppositifolia* (fagot) (Wheeler and Aguon 1978; Wiles 1981, 1982b). On other islands in the Mariana archipelago, Mariana fruit bats have been observed in secondary forest and gago groves (Glass and Taisacan 1988; Worthington and Taisacan 1996; Worthington *et al.* 2001). Factors involved in roost site selection are not clear, but data from Guam indicate that some sites may be selected for their inaccessibility by humans and thus limited human disturbance. Fruit bats will abandon roost sites if disturbed and have been reported to move to new locations up to 6 mi (10 km) away (USFWS 1990a).

In summary, the primary constituent elements required by the Mariana fruit bat for the biological needs of foraging, sheltering, roosting, and rearing of young are found in areas supporting limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types provide the primary constituent elements of:

(1) Plant species used for foraging, such as breadfruit, papaya, fadang, fig, kafu, coconut palm, and talisai; and

(2) Remote locations, often within 328 ft (100 m) of clifflines that are 260 to 590 ft (80 to 180 m) tall, with limited exposure to human disturbance and that contain mature fig, chopak, gago, pengua, panao, fagot, and other tree species that are used for roosting and reproductive activity.

Mariana crow: Historically, the distribution of Mariana crows among habitats was similar on Guam and Rota. Crows were known to use secondary, coastal, ravine, and agricultural forests, including coconut plantations (Seale 1901; Stophlet 1946; Marshall 1949; Baker 1951; Jenkins 1983), but all evidence indicates they were most abundant in native limestone forests (Michael 1987; Morton *et al.* 1999). Mariana crow nests on Guam have been found in 11 tree genera, all but one of which are native, but most nests are located high in emergent fig or *Elaeocarpus joga* (yoga) trees (Morton 1996; C. Aguon, GDAWR, unpubl. data).

On Rota, crows use both mature and secondary limestone forests (Morton *et al.* 1999), but not exclusively (M. Lusk and E. Taisacan unpubl. data). Of 156 nest sites on Rota, 39 percent and 42 percent were in mature and secondary limestone forest, respectively (Morton *et al.* 1999). Between 1992 and 1994, 90 percent (n = 115) of observations of perching crows on Rota were in native trees, primarily in middle to low heights of the canopy (M. Lusk and E. Taisacan unpubl. data). Mariana crows nested in 20 tree genera on Rota (Morton *et al.*

1999). Of 161 nest trees found during 1996–99, 63 percent were of four species: fagot, *Eugenia reinwardtiana* (a abang), *Intsia bijuga* (ifit), and *Premna obtusifolia* (ahgao) (Morton *et al.* 1999). Individual nest trees averaged approximately 7 in (16.9 cm) diameter at breast height and 28.5 ft (8.7 m) high. Canopy cover over nest sites averaged 93 percent and was never less than 79 percent. Although 18 percent of the forested area of Rota is tangantangan or some other species of introduced tree (Falanruw *et al.* 1989), no crow nests have been found in any nonnative tree species. Nests were located at least 950 ft (290 m) from the nearest road and 203 ft (62 m) from the nearest forest edge. The distances from edges strongly suggest that nesting crows are sensitive to disturbance by humans (Morton *et al.* 1999). No detailed information is available on historical nest site selection by crows on Guam, but the remaining crows on Guam nest and forage only in primary or mature limestone forest.

On Rota, Morton *et al.* (1999) found that breeding crows in six study areas averaged one pair per 50 ac (22 ha) of forested habitat, and each territory was dominated by native forest. Pair densities ranged from one per 91 ac (37 ha) in relatively fragmented forest, to as high as one pair per 30 ac (12 ha) in mostly intact limestone forest along a coastal terrace. Established pairs occupy territories throughout the year but only aggressively defend them from July through January.

In addition to habitat for breeding territories, Mariana crows also require habitat for juvenile dispersal. When juvenile Mariana crows leave the nest, they are typically tended by their parents until the following breeding season, a period that ranges from 3 to 18 months (Morton *et al.* 1999). After this parental attendance period, these juveniles enter the non-breeding population of Mariana crows until they are recruited into the adult population at approximately three years of age (Morton *et al.* 1999). Little research has been done on the non-breeding population of crows and their habitat needs, but the territoriality of breeding adults and the time required before juveniles enter the breeding population indicate that foraging habitat outside established territories is needed to maintain juvenile Mariana crows.

Mariana crows may forage at any height in the forest or on the ground (Jenkins 1983; Tomback 1986). These crows forage in at least 18 tree genera, most of which are native (Jenkins 1983; Tomback 1986; C. Aguon unpubl. data). Mariana crows are omnivorous and have been observed feeding on a variety of native and nonnative invertebrates, reptiles, young rats, and birds' eggs, as well as on the foliage, buds, fruits, and seeds of at least 26 plant species (Jenkins 1983; Tomback 1986; Michael 1987; C. Aguon unpubl. data).

In summary, the primary constituent elements required by the Mariana crow for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types provide the primary constituent elements of:

(1) Emergent and subcanopy trees with dense cover for breeding such as fagot, pengua, ifit, ahgao, aabang, fig, yoga, and *Tristiropsis obtusangula* (faniok);

(2) Sufficient area of predominantly native limestone forest to allow nesting at least 950 ft (290 m) from the nearest road and 203 ft (62 m) from the nearest forest edge and to support Mariana crow breeding territories (approximately 30 to 91 ac (12 to 37 ha)) and foraging areas for nonbreeding juvenile crows; and

(3) Standing dead trees and plant species for foraging, such as *Aglaia mariannensis* (maypunayo), breadfruit, coconut palm, fagot, *Hibiscus tiliaceus* (pago), ifit, tangantangan, *Ochrosia mariannensis* (langiti), kafu, ahgao, fig, and yoga.

Guam Micronesian kingfisher: Jenkins (1983) recorded the Guam Micronesian kingfisher nesting and foraging in northern Guam in mature limestone forest, secondary forests, and coastal forests dominated by coconut trees. Kingfishers also were found historically in southern Guam in ravine and coastal forests (Jenkins 1983). Few data exist about specific kingfisher nest sites on Guam, but in one study, nest sites in northern Guam were found in native limestone forest, and the location of these sites within the forest was correlated with closed canopy cover and dense understory vegetation (Marshall 1989). Recent studies of the Pohnpei Micronesian kingfisher (*Halcyon cinnamomina reichenbachii*) have documented that this subspecies also occurs in a wide range of forest types; however, territories of all 14 breeding pairs studied on Pohnpei included at least several hectares of mature native rainforest (D. Kesler, pers. comm., 2002).

Micronesian kingfishers are obligate cavity nesters and require specific substrates for excavating nest cavities. On Guam, Marshall (1989) found that kingfishers excavated nest cavities in relatively soft, decaying wood in standing dead trees, including faniok, *Pisonia grandis* (umumu), breadfruit, fig, and coconut palm, and in the mud nests of *Nasutitermes* spp. termites and the root masses of epiphytic ferns. All nest cavities found in trees were in large-diameter trees (average diameter at breast height (dbh) 16.8 ± 5.0 in (42.7 ± 12.7 cm)), and these trees contained an average of 19 excavations, most of which were incomplete (Marshall 1989). Multiple excavations in suitable nest trees suggest both the importance of these trees as nest sites and the importance of excavation in the kingfishers' courtship and nesting behavior (Jenkins 1983). The links between courtship behavior, excavation activity, and nest substrate requirements have been well documented in the captive population of this species as well (Bahner *et al.* 1998; S. Derrickson, Conservation Research Center, *in litt.* 2002). Marshall (1989) concluded that the population density of kingfishers on Guam may be limited by the availability of nest sites.

Guam Micronesian kingfishers maintain year-round territories, which they aggressively defend (Jenkins 1983). Nothing is known about the territory size requirements of Micronesian kingfishers on Guam, but research on the Pohnpei subspecies indicates that territory sizes in upland forest are approximately 25 ac (10 ha) (D. Kesler, pers. comm., 2001).

Guam Micronesian kingfishers feed both on invertebrates and small vertebrates, including insects, segmented worms, hermit crabs, skinks, geckos, and possibly other small vertebrates (Marshall 1949; Baker 1951; Jenkins 1983). This species typically forages by perching motionless on exposed perches and swooping down to capture prey on the ground (Jenkins 1983). Guam kingfishers also will capture prey from foliage and have been observed gleaning insects from tree bark (Maben 1982). Marshall (1989) observed no kingfishers foraging in dead trees.

In summary, the primary constituent elements required for the Guam Micronesian kingfisher for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests containing native and introduced plant species. These forest types include the primary constituent elements of:

(1) Closed canopy and well-developed understory vegetation; large (minimum of approximately 17 in (43 cm) dbh), standing dead trees (especially faniok, umumu, breadfruit, fig, and coconut palm); mud nests of *Nasutitermes* spp.

termites; and root masses of epiphytic ferns for breeding;

(2) Sufficiently diverse structure to provide exposed perches and ground surfaces, leaf litter, and other substrates that support a wide range of vertebrate and invertebrate prey species for foraging kingfishers; and

(3) Sufficient overall breeding and foraging area to support kingfisher territories of approximately 25 ac (10 ha) each.

Criteria Used To Identify Critical Habitat

We used several criteria to identify and select lands for designation as critical habitat. For the Mariana fruit bat (Guam only) and Mariana crow, we began with all areas that are currently occupied. The Guam subspecies of Micronesian kingfisher is currently extirpated in the wild, so no habitat currently is occupied. We then examined unoccupied forested lands on Guam containing the primary constituent elements that are needed for the conservation of each species (see explanation below). We identified which unoccupied areas on Guam were needed for the conservation of each species using recovery habitat identified in recovery plans and information on the historical distribution of each species. Within the area of historical distribution, we gave preference to lands that provide the largest tracts of native forest and were more recently occupied by each species. We determined the boundaries of critical habitat units by the extent of suitable forest containing the primary constituent elements. The location of these suitable forests in many areas coincided with the boundaries of military reservations, National Wildlife Refuges, and conservation areas on Guam. We also included some small non-forested areas interspersed with forested areas because of their potential for reforestation. We did not include urban lands and agricultural fields because they generally do not contain the primary constituent elements and restoration to native forest is extremely unlikely.

On Guam, we identified two units for each species using the guidelines provided by the Mariana fruit bat recovery plan (1990a), Guam forest bird recovery plan (1990b), and recommendations by our Mariana crow recovery team for the draft revised recovery plan (USFWS in prep). We also used the recommendation of the recovery team to identify one unit for the Mariana crow on Rota (USFWS in prep). For the conservation of the Mariana crow, current recovery recommendations and the draft revised recovery plan (USFWS in prep) call for established populations in northern Guam, in southern Guam, and on Rota.

Establishing two geographically separated populations on Guam is important to decrease the risk of extirpation of the species as a result of localized, stochastic events, such as typhoons and disease outbreaks (Dobson and May 1986; NRC 1997). A long-accepted view developed from ecological research is that the existence of more than one population increases the long-term likelihood of species' persistence (Raup 1991; Meffe and Carroll 1997).

Within the designated critical habitat unit boundaries, only lands containing one or more of the primary constituent elements are designated as critical habitat. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas do not contain the primary constituent elements and therefore are not designated as critical habitat.

Section 3(5)(A)(ii) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for conservation of the species. We included unoccupied habitat in the designated critical habitat for the Guam Micronesian kingfisher and Mariana crow on Guam because, as explained below, the currently occupied habitat alone is not sufficient to provide for the conservation of the species.

Mariana fruit bat: Although the current population of Mariana fruit bats on Guam is small and most bats roost in a limited area, the foraging behavior and diverse diet of the fruit bats cause them to use most of the island for foraging, as documented by Wiles *et al.* (1995). Thus, all of the designated critical habitat for this species is used for foraging and/or roosting and is considered occupied.

Mariana crow: The critical habitat unit for the Mariana crow on Rota reflects the goal of establishing and maintaining a population of at least 75 territorial breeding pairs on Rota and our recovery team's estimation of areas necessary to meet this goal (USFWS in prep). The lands designated as critical habitat for the Mariana crow on Rota support at least 63 known breeding pairs and includes areas that are believed to support an additional 25 pairs (Morton *et al.* 1999). We included all areas identified by our recovery team as high priority, and incorporated lower priority areas known or believed to harbor crows to provide additional habitat to support the non-breeding crow population and create greater connectivity between high-priority areas.

On Guam, the distribution and abundance of Mariana crows have declined precipitously over the last three decades (USFWS in prep.). Currently, the population consists of 10 birds occupying approximately 1,920 ac (777 ha) located in the munitions storage area of Andersen Air Force Base in northern Guam. This current distribution represents an 85 percent reduction in range from the estimated distribution in 1994 (12,633 ac; 5,112 ha) reported by Wiles *et al.* (1995).

Mariana crows are territorial; each pair defends an area of a size determined by forest type and structure (Morton *et al.* 1999). The maximum density or carrying capacity of crow pairs in a particular area depends on both habitat quality (for foraging and breeding) and the spatial arrangement of territories. On Rota, Mariana crow territories ranged from 30 to 91 ac (12 to 37 ha) in size with an average of one pair per 54 ac (22 ha) (Morton *et al.* 1999). The area currently occupied on Guam (1,920 ac; 777 ha) can support only about 35 pairs, which is fewer than the 75 pairs recommended by our recovery team and therefore is too small to support a Mariana crow population large enough to be considered safe from extinction.

Because of the territorial nature of the Mariana crow, its small total population size, limited range, vulnerability to environmental threats, and recovery goals drafted for the species, inclusion of certain currently unoccupied areas on Guam that contain the primary constituent elements is essential to the conservation of the species. Recovery to the point where listing is no longer necessary will require restoration of Mariana crows on Guam through natural dispersal, translocation, and/or release of captive birds in areas that were formerly inhabited but that are not currently occupied. Unoccupied areas adjacent to currently occupied areas are needed to allow expansion of the existing population and help alleviate threats associated with small population size. Specifically, the 10 crows currently found on Andersen Air Force Base in northern Guam do not constitute a viable population of this species. These animals are unlikely to increase their numbers to a self-sustaining level in the area they presently occupy, even with human intervention. For this population to persist over the long term, it must

expand onto adjacent lands that now are unoccupied.

Guam Micronesian kingfisher: The last wild kingfisher on Guam was seen in 1988, and this subspecies is believed extirpated from the wild (Wiles *et al.* 2003). The total population now consists of 63 birds in 11 captive breeding institutions in the mainland United States and by the Guam Division of Aquatic and Wildlife Resources (Bahner, *in litt.* 2003). Because the Guam Micronesian kingfisher does not exist in the wild and all suitable habitat presently is unoccupied, inclusion of unoccupied areas containing the primary constituent elements is essential to the conservation of this species. Recovery to the point where the protection afforded by listing is no longer necessary will require restoration of the Guam Micronesian kingfisher through release of captive birds and subsequent natural dispersal into areas of Guam that formerly were inhabited.

Critical Habitat Designation

Lands designated as critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher all occur in one unit on Guam. Lands designated as critical habitat for the Mariana crow occur in one unit on Rota. The critical habitat units (and military, Government of Guam, and private lands on Guam excluded under sections 4(a)(3), and 4(b)(2) of the ESA, as amended by Section 318 of the fiscal year 2004 National Defense Authorization Act) provide the full range of primary constituent elements needed by these three species, including a variety of undeveloped, forested areas that are used for foraging, roosting, shelter, nesting, and raising offspring. Designated critical habitat includes land under Federal, Commonwealth, and private ownership, with Federal lands being managed by the Department of the Interior. The approximate area and land ownership within each unit are shown in Table 1. Table 2 provides a summary of the total area identified as essential to the long-term conservation of the three species, the total area excluded from critical habitat designation, and the designated critical habitat on Guam and Rota.

TABLE 1.—APPROXIMATE AREA (ACRES, HECTARES) OF DESIGNATED CRITICAL HABITAT AREAS BY LAND OWNERSHIP

Species	Unit	Federal gov't. [a]	Local gov't. [b]	Private	Total
Mariana Fruit Bat	Mariana Fruit Bat Unit: *Guam*	376 ac (152 ha)	0 ac (0 ha)	0 ac (0 ha)	376 ac (152 ha)
	Total (Mariana fruit Bat)	376 ac (152 ha)	0 ac (0 ha)	0 ac (0 ha)	376 ac (152 ha)
Mariana Crow	Unit A: *Guam*	376 ac (152 ha)	0 ac (0 ha)	0 ac (0 ha)	376 ac (152 ha)
	Unit B: *Rota*—Subunit 1	0 ac (0 ha)	5,221 ac (2,113 ha)	447 ac (181 ha)	5,668 ac (2,294 ha)
	Unit B: *Rota*—Subunit 2	0 ac (0 ha)	349 ac (141 ha)	16 ac (7 ha)	365 ac (148 ha)
	Total (Mariana Crow)	376 ac (152 ha)	5,570 ac (2,254 ha)	463 ac (188 ha)	6,409 ac (2,594 ha)
Guam Micronesian Kingfisher.	Guam Micronesian Kingfisher Unit: *Guam*	376 ac (152 ha)	0 ac (0 ha)	0 ac (0 ha)	376 ac (152 ha)
	Total (Guam Micronesian Kingfisher)	376 ac (152 ha)	0 ac (0 ha)	0 ac (0 ha)	376 ac (152 ha)
Total for all species (counting identical or overlapping units only once)		376 ac (152 ha)	5,570 ac (2,254 ha)	463 ac (188 ha)	6,409 ac (2,594 ha)

[a] Federal lands are under the ownership or jurisdiction of the U.S. Fish and Wildlife Service.
[b] Local lands are owned by and managed for the people of the Territory of Guam and the Commonwealth of the Northern Mariana Islands by the Chamorro Land Trust Commission and Marianas Public Land Authority, respectively.

TABLE 2.—APPROXIMATE AREAS IN ACRES (AC) AND HECTARES (HA) OF ESSENTIAL HABITAT, EXCLUDED AREAS, AND DESIGNATED CRITICAL HABITAT

	Guam	Rota
Area considered essential	24,121 ac (9,761 ha)	6,033 ac (2,442 ha).
Area excluded under sections 4(a)(3) and/or 4(b)(2) of the ESA, as amended by Section 318 of the fiscal year 2004 National Defense Authorization Act (Andersen Air Force Base; COMNAVMARIANAS Ordnance Annex and Communications Annex; Government of Guam lands; and private lands on Guam).	23,745 ac (9,609 ha)	0 ac (0 ha).
Final critical habitat	376 ac (152 ha)	6,033 ac (2,442 ha).

All of the designated critical habitat on Guam currently is occupied by the Mariana fruit bat. None of the critical habitat on Guam is currently occupied by the Mariana crow or Guam Micronesian kingfisher, but it was occupied historically. On Rota, the designated critical habitat is occupied by the Mariana crow.

Mariana Fruit Bat

This unit consists of approximately 376 ac (152 ha) of land in the fee simple portion of the Guam National Wildlife Refuge. The vegetation in this unit consists of coastal, limestone, and secondary forests composed of native and introduced plant species and contains the full range of primary constituent elements needed for the conservation of the Mariana fruit bat.

This area is important because it contains areas used for foraging by the only known Mariana fruit bat colony on Guam. This area also contains roosting and foraging sites used by bats since 1981 (see Wiles et al. 1995 for details). This unit also encompasses essential conservation areas identified in the Mariana fruit bat recovery plan (USFWS 1990a).

Excluded from designation (see ''Exclusions from Critical Habitat'') are 10,838 ac (4,386 ha) of Air Force lands, 7,977 ac (3,228 ha) of Navy lands, 2,989 ac (1,210 ha) of Government of Guam lands, and 1,941 ac (785 ha) of private lands in northern and southern Guam that were proposed as critical habitat in the October 15, 2002, proposed rule (67 FR 63738), leaving a final designation of 376 ac (816 ha). Although Air Force, Navy, Government of Guam, and private lands are excluded from final critical habitat designation, they still contribute to the conservation of the Mariana fruit bat.

Mariana Crow

Unit A: Guam

Unit A consists of approximately 376 ac (152 ha) of land in the fee simple portion of the Guam National Wildlife Refuge. Unit A includes limestone, secondary, and coastal forests composed of native and nonnative plants and contains the full range of primary constituent elements needed for long-term conservation of the Mariana crow on Guam. This area includes lands in the 1994 historical distribution of Mariana crows in northern Guam (Wiles *et al.* 1995) and areas that contained crows in northern Guam in 1981 (Engbring and Ramsey 1984). Unit A was also identified by our Mariana crow recovery team as important recovery habitat in the draft revised Mariana crow recovery plan (USFWS in prep.).

Excluded from designation (*see* ''Exclusions from Critical Habitat'') are 10,838 ac (4,386 ha) of Air Force lands, 7,977 ac (3,228 ha) of Navy lands, 2,768 ac (1,121 ha) of Government of Guam lands, and 1,941 ac (785 ha) of private lands in northern and southern Guam that were proposed as critical habitat in the October 15, 2002, proposed rule (67 FR 63738), leaving a final designation of 376 ac (152 ha). Although Air Force, Navy, Government of Guam, and private lands are excluded from final critical habitat designation, they still contribute to the conservation of the Mariana crow.

Unit B: Rota

Unit B consists of approximately 6,033 ac (2,442 ha) of forested land encompassing much of the undeveloped areas on Rota. This area contains the Afatung Wildlife Management Area, I Chenchon Bird Sanctuary, and forested areas on public and private lands around the Sabana and Sinapalu plateaus. Unit B is composed of limestone, secondary, agricultural, coastal, and ravine forests consisting of native and nonnative plants and contains the full range of primary constituent elements needed for long-term conservation of the Mariana crow on Rota. This area includes the known breeding territories of at least 63 Mariana crow pairs and possibly those of an additional 25 pairs (Morton *et al.* 1999). This area also includes the areas on Rota identified by our Mariana crow recovery team as important conservation areas in the draft revised Mariana crow recovery plan (USFWS in prep.).

The critical habitat designated in Unit B consists of five sections. The first section includes the Afatung Wildlife Management Area in the Palii region and the forested areas in the Finata, Alaguan, and I Koridot regions. The second section includes the I Chenchon Bird Sanctuary and the forested areas in the I Chiugai and As Dudo regions of eastern Rota. The third section consists of much of the forested areas in the As Matmos, Mochong, Lalayak, Pekngasu, and I Batko regions, as well as the forested areas adjacent to the Rota Resort. The fourth section includes much of the forested areas in the Mananana, Uyulan Hulo, Sailgai Hulo, Gayauga, Lempanai, and Lupok regions. The fifth section includes much of the forested areas, as well as some of the grassland areas, in the Talakhaya and Gaonan regions of southern Rota. None of Unit B was excluded.

Guam Micronesian Kingfisher

Designated critical habitat for the Guam Micronesian kingfisher consists of approximately 376 ac (152 ha) of land in the fee simple portion of the Guam National Wildlife Refuge. The vegetation in this designated unit consists of coastal, limestone, and secondary forests composed of native and introduced species that contain the full range of primary constituent elements required for the long-term conservation of the Guam Micronesian kingfisher in northern Guam. This unit includes forested areas along the northwestern coasts of the island that were occupied by Guam Micronesian kingfishers in the 1970s and early 1980s (Drahos 1977; Maben and Aguon 1980, 1981; Engbring and Ramsey 1984). This unit also encompasses essential conservation areas identified in the forest bird recovery plan for northern Guam (USFWS 1990b).

Excluded from designation (*see* ''Exclusions from Critical Habitat'') are 10,838 ac (4,386 ha) of Air Force lands, 7,977 ac (3,228 ha) of Navy lands, 2,989 ac (1,210 ha) of Government of Guam lands, and 1,941 ac (785 ha) of private lands in northern and southern Guam that were proposed as critical habitat in the October 15, 2002, proposed rule (67 FR 63738), leaving a final designation of 376 ac (152 ha). Although Air Force, Navy, Government of Guam, and private lands are excluded from final critical habitat designation, they still contribute to the conservation of the Guam Micronesian kingfisher.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed

species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect these species or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat to the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would often result in jeopardy to the species concerned when the area of the proposed action is occupied by the species concerned.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Actions that would result in removing, thinning, or destroying Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow forest habitat by burning, mechanical, chemical, or other means (*e.g.*, woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, *etc.*). These activities could eliminate habitat necessary for the growth and reproduction of these species.

(2) Actions that would result in appreciably decreasing habitat value or quality through introduction or promotion of potential nest predators, disease or disease vectors, vertebrate or invertebrate food competitors, invasive plant species, forest fragmentation, overgrazing, augmentation of feral ungulate populations, water diversion or impoundment, groundwater pumping or other activities that alter water quality or quantity to an extent that affects vegetation structure, or activities that increase the risk of fire. These actions could eliminate or reduce the habitat necessary for the growth and reproduction of these species.

We consider the Mariana fruit bat critical habitat unit to be occupied by the species because it is utilized by foraging and roosting Mariana fruit bats. We also consider the Mariana crow critical habitat Unit B on Rota to be occupied by the species because it is utilized by nesting and foraging Mariana crows. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Exclusions From Critical Habitat

Guam Lands Under U.S. Air Force Jurisdiction

Section 4(a)(3) of the Act, as amended by Section 318 of the fiscal year 2004 National Defense Authorization Act (Public Law No: 108–136), states that the Secretary of the Interior shall not designate critical habitat on Department of Defense lands that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines the plan provides

a benefit to the species. Department of Defense lands may be excluded from critical habitat under section 4(a)(3) if they are subject to an operative INRMP which provides a benefit by addressing the maintenance or improvement of primary constituent elements important to the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher.

As previously explained, the primary cause of the decline and disappearance of native bird and bat species on Guam has been predation by nonnative species, especially the brown treesnake (Savidge 1986, 1987; USFWS 1990a, 1990b, 2004a, in prep; Wiles *et al.* 1995). Habitat loss and degradation by a combination of development and suppression of forest growth by introduced ungulates also have contributed to the decline of native species in the Mariana archipelago. In addition to these other threats, hunting has had a significant impact on the Mariana fruit bat.

The management actions needed to address these threats and ensure the survival and long-term conservation of the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher are described in the recovery plans for these three species and other documents (USFWS 1990a, 1990b, 2004a, in prep; Wiles *et al.* 1995; NRC 1997). Some of these management actions include: (1) Control brown treesnakes and other nonnative predators, and conduct research to develop methods for control over large areas and eradication; (2) conduct management activities, *e.g.*, feral ungulate control and reforestation, which are necessary to protect and enhance existing essential habitat on Guam and Rota; (3) protect fruit bats from illegal hunting; and (4) reintroduce the Mariana crow and Guam Micronesian kingfisher to northern and southern Guam and establish self-sustaining populations.

The Air Force completed a final INRMP for Andersen Air Force Base in February 2002 which was updated in December 2003 (Air Force 2003). This updated plan covers all Air Force lands included in Andersen Air Force Base in northern Guam. The long-term natural resource management goal of Andersen Air Force Base is to: ''[m]anage, conserve, protect, and enhance Andersen Air Force Base's natural and cultural resources and environmental quality in the best national interest, compatible with military operations and in accordance with the principles of multiple use and sustained yield (for harvestable resources). All natural resources management programs will be undertaken with a special emphasis on the protection and recovery of endangered and threatened species, and to perpetuate Guam's native biodiversity.''

To achieve this goal, the INRMP for Air Force lands includes several projects that will maintain or benefit the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher. These projects include: development and implementation of a Mariana fruit bat colony protection plan, area-wide brown treesnake trapping, construction of a cat barrier around Area 50, removal of feral ungulates from the Munitions Storage Area and Area 50, construction of ungulate exclosures in areas of high ecological value and removal of ungulates from these exclosures, monitoring of habitat regeneration in these exclosures, base-wide ''habitat biodiversity monitoring,'' and public education on conservation issues. All of these actions have been developed through coordination with the Service.

In addition, the Air Force has authorized the Guam Division of Aquatic and Wildlife Resources to release and monitor captive-reared Guam rails (*Gallirallus owstoni;* formerly extirpated) and translocate captive-reared Mariana crows on Andersen Air Force Base (Vice *et al.* 2001; Radway 2003; USFWS in prep). In the past four years, 17 Mariana crows and 62 Guam rails have been released on Guam, all on Air Force lands (D. Vice, pers. comm.; USFWS in prep). In their INRMP, the Air Force also affirms its support for the eventual release of captive-bred Guam Micronesian kingfishers on their lands (Air Force 2003).

The activities described above result in the following benefits to the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher: (1) Significant reduction of treesnakes in the area currently occupied by Mariana crows on Guam, (2) progress toward more efficient methods for controlling brown treesnakes, (3) habitat enhancement for all three species, (4) potential increase in nest success for Mariana crows, (5) augmentation of the crow population on Guam, (6) increased knowledge of the crow's biology through monitoring, and (7) physical protection of the Mariana fruit bat colony on Andersen Air Force Base. The comprehensive list of ongoing and proposed management activities detailed in the INRMP (Air Force 2003) address management actions (predator control, protection and enhancement of essential habitat, protection of fruit bats from illegal hunting, and reintroduction and establishment of self-sustaining populations of these three species) that provide a significant conservation benefit to the species. Without these management actions on Andersen Air Force Base, the Mariana crow and Mariana fruit bat likely would be extirpated from Guam, and no suitable areas for reintroduction of the Guam Micronesian kingfisher would exist.

In view of the benefit to the bat and birds of the foregoing management and stewardship actions detailed in the updated Andersen Air Force Base INRMP, the area is not included as critical habitat under Section 4(a)(3) of the Act, as amended by Section 318 of the fiscal year 2004 National Defense Authorization Act. Although these areas are not included from the final critical habitat designation, they remain essential for the conservation of the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher, and management for the conservation of these species on Andersen Air Force Base is necessary to meet the overall recovery goals for these species.

Analysis of Impacts Under ESA Section 4(b)(2)

Section 4(b)(2) of the Act, as amended by subsection (b) of Section 318 of the fiscal year 2004 National Defense Authorization Act (Public Law No: 108–136), requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic, national security, and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation on October 15, 2002, a draft economic analysis was prepared to evaluate the direct and indirect economic impact associated with the proposed designation, in accordance with recent court decisions, such as *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on December 5, 2002 (67 FR 72407). We accepted comments on the draft analysis until the comment period closed on January 6, 2003. We reopened the comment period on January 28, 2003, and accepted additional comments on the draft analysis until February 18, 2003 (68 FR 4159).

Our draft economic analysis evaluated the direct and indirect economic

impacts associated with our proposed critical habitat designation for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher on the island of Guam and the Mariana crow on the island of Rota over the next ten years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits not directly related to compliance with the Act. Examples of indirect impacts include potential effects to property values and the cost of investigating the requirements resulting from a critical habitat designation.

The categories of direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations; (2) modifications to projects, activities, or land uses resulting from section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat, including potential effects on property values; and (4) the potential offsetting beneficial costs associated with critical habitat. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency (*i.e.*, direct costs).

Following the close of the comment period on the proposed rule and draft economic analysis, an addendum was completed that incorporated public comments on the draft analysis and made other changes as necessary. The draft economic analysis and addendum address the impact of the proposed and final critical habitat designation, respectively, that may be attributable coextensively to the listing of the species. Because of uncertainty about the benefits and economic costs resulting solely from critical habitat designations, it is reasonable to estimate the economic impacts of a designation utilizing this single baseline.

Together, the draft economic analysis and the addendum constitute our final economic analysis. The final economic analysis estimates that, over the next 10 years, the designation (coextensive with the listing) may result in direct economic impacts from implementation of section 7 of approximately $1.227 million present value cost. This increase of approximately $173,630 from the draft economic analysis' estimated potential direct economic effects from implementation of section 7 is due primarily to the evaluation of new projects identified during the public comment periods. This estimate also includes Air Force, Navy, Government of Guam, and private lands that were proposed as critical habitat but have been excluded from the final designation. Therefore, the direct cost of designating critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher is likely lower than this estimate. We have excluded much of these lands so the direct economic impacts of the final designation is likely to be substantially lower than this estimate. With approximately 90 percent reduction in acreage and only refuge and Rota lands remaining, the cost may be closer to $463,300.

While our final economic analysis includes an evaluation of potential indirect costs associated with the designation of critical habitat for Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher on Guam and the Mariana crow on Rota, there is considerable uncertainty whether any or all of these indirect impacts will occur, as they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the probability of different outcomes. The costs are of necessity speculative and may overestimate the impacts. However, without having more specific information, a conservative approach (maximum economic impact) was used.

The final economic analysis discusses economic benefits in qualitative terms rather than providing dollar estimates because of the lack of information available to quantify the economic benefits of endangered species preservation and ecosystem improvements. The economic analysis identifies existence value, use value, recreational benefits, overall ecosystem health, and ecosystem preservation values as potential benefits of critical habitat designation. However, as stated above, economic benefits could not be estimated quantitatively due to a lack of information.

A more detailed discussion of the economic impacts is contained in the draft economic analysis and the addendum. Both documents are available for inspection at the Pacific Islands Fish and Wildlife Office and are available by request (*see* **ADDRESSES** section).

No critical habitat units in the proposed rule were excluded or modified due to economic impacts because the expected cost of the designation is not expected to be significant. The likely direct cost of designating critical habitat on Guam for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher is estimated to be $162,582 per year over the next ten years. This estimate, however, includes areas that were proposed as critical habitat but have been excluded from the final designation on Guam. Therefore, the anticipated direct costs of designating critical habitat on Guam for these three species are likely lower. The likely direct cost of designating critical habitat on Rota for the Mariana crow is estimated to be $12,142 per year over the next ten years.

National Security and Other Impacts

The following analysis describes the likely positive and negative impacts of a critical habitat designation on Navy lands, Government of Guam lands, and private lands on Guam compared to the likely positive and negative impacts of a critical habitat exclusion on those lands. The Service focused on the following issues: to what extent a critical habitat designation would confer conservation, regulatory, and educational benefits, and to what extent an exclusion of critical habitat would reduce or eliminate negative impacts to the Navy's military mission and stewardship program under their COMNAVMARIANAS INRMP and the Government of Guam's stewardship program under their proposed alternative to critical habitat designation.

Lands Under U.S. Navy Jurisdiction

(1) Benefits of Designating Navy Lands as Critical Habitat

Under section 7 of the Act, each Federal agency shall, in consultation with the Service, insure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. In the consultation process, a determination is made as to whether the proposed action is likely to result in jeopardy to the species or destruction or adverse modification of critical habitat. If jeopardy and/or adverse modification are likely, then the Service is required to provide reasonable and prudent alternatives to the proposed action to avoid jeopardy to the species and/or adverse modification of critical habitat. In addition, under section 7 of the Act, if the proposed action is not likely to jeopardize any listed species, but is anticipated to result in incidental take of a listed species then reasonable and prudent measures are required to minimize such incidental take. The primary regulatory benefit of critical

habitat designation on Navy lands would be to ensure that no actions authorized, funded, or carried out by the Navy would be likely to destroy or adversely modify critical habitat.

Critical habitat was proposed on 8,285 ac (3,353 ha) of Navy lands at the Communications Annex and the Ordnance Annex. These lands are considered occupied by foraging Mariana fruit bats, and unoccupied by the Mariana crow and Guam Micronesian kingfisher. In 1994 the Navy entered into a cooperative agreement with the Service to create the Guam National Wildlife Refuge Overlay on Navy lands in Guam (Navy and USFWS 1994). The primary goal of the overlay refuge is to address the conservation needs of listed species through "* * * a long-term, comprehensive program [that] * * * includes * * * brown treesnake control and eradication, * * * habitat and ecosystem protection, endangered and threatened species recovery and reintroduction.''(Navy and USFWS 1994). This agreement also provided that the Navy will coordinate with the Service for any Federal action which may affect Navy lands included within the Guam National Wildlife Refuge and identified in published recovery plans as providing essential habitat for these three species. Approximately 8,278 ac (3,350 ha) of proposed critical habitat were within the Guam NWR overlay lands on the two Navy facilities. Therefore, any Federal activities which may affect these areas, even if they are not currently occupied by the species, requires coordination between the Service and the Navy regarding impacts to this habitat.

Currently, the Service believes that the proposed critical habitat for the Mariana crow and Guam Micronesian kingfisher on Navy lands is unoccupied by these species. The recovery goals for these species are discussed under "Criteria Used to Designate Critical Habitat.'' In order to reach the goals, unoccupied areas on Navy lands will need to be occupied by self-sustaining populations. Neither recovery of these species nor long-term conservation of the Mariana fruit bat are possible without active management of their habitat, including brown treesnake control, habitat restoration and enhancement, and control of poaching (USFWS 1990a).

As noted above, a critical habitat designation in these unoccupied areas would ensure that the Navy would consult with the Service for any actions it proposes that may affect this unoccupied habitat, and would require the Navy to avoid actions that would destroy or adversely modify the habitat. However, avoiding habitat destruction or adverse modification may not result in a reintroduction of these species, nor other active conservation measures identified in the recovery plans and currently being undertaken by the Navy to increase the quality of this habitat for listed species (*e.g.* predator control, anti-poaching efforts, *etc*).

Another potential value of a critical habitat designation on Navy lands is the education of Navy personnel and the general public concerning the conservation value of these lands. Proposed and final critical habitat rules may serve an educational function by communicating to the public and military personnel that specific land areas are essential to the long-term conservation of listed species. However, most of these benefits have been effectively communicated through our publication of the proposed critical habitat rule, the many public and interagency meetings held to discuss the proposal, and the discussion of the excluded areas in the notice for this final rule. The inclusion of much of this land within the Guam National Wildlife Refuge overlay and the identification of essential habitat in the published recovery plans for these species (USFWS 1990a; 1990b) also confer important educational benefits.

(2) Benefits of Excluding Navy Lands From Critical Habitat Designation

The Navy is engaged in, or had committed to engage in, a wide variety of proactive conservation activities on their lands in Guam. These activities include brown treesnake control measures, protection and enhancement of degraded habitat, and controlling the illegal hunting of Mariana fruit bat.

The Navy has expressed concern that the overall economic burden of a critical habitat designation may reduce the funding available for these essential conservation activities. Given their strong statement of opposition, there is also concern a designation on Navy lands may reduce their incentive to maximize their conservation efforts on Guam (Moore, *in litt.*, 2002). The Service does believe that a critical habitat designation may negatively affect the Navy's continued commitment to large-scale conservation and management efforts on Guam, as it would result in potential delays in completing section 7 consultation requirements that would be triggered by critical habitat designations.

While section 7(a)(1) of the Act requires Federal agencies to carry out programs for the conservation of listed species, it does not require any specific actions or expenditures in any specific locations. The conservation actions noted above remain voluntary on the part of the Navy.

In addition, under the cooperative agreement which established the Guam National Wildlife Refuge, the Navy retains the right to withdraw its lands from the refuge if critical habitat is designated. While the Navy has not openly stated any intent to do so, this remains a possibility, and would be a considerable loss for the conservation of these species.

The Service also finds that a final critical habitat designation would negatively impact the Navy's military mission, and thus national security. Overall, the Service has been able to work closely and in a positive, collaborative fashion with the Navy to minimize potential negative impacts to the Navy's training and operational activities as a consequence of the Act's regulations. However, consultations cannot avoid taking time, and in many cases conservation measures may result from consultation. Delays and additional costs to accomplish training or operational needs may have significant adverse consequences on military readiness essential to national security.

Navy lands on Guam are used for training by the Navy, Marines, Army, Air Force, National Guard and Reserves. Forces based in the continental United States, along with those that are forward-based and forward-deployed, train on these lands. The Ordnance Annex offers areas for company-level operations, helicopter landing zones, and combat swimmer training. The Communications Annex is suitable for ground maneuvers, patrols and raids, and has a small arms range.

The Deputy Chief of Naval Operations has commented on this proposal that:

"We are extremely concerned that a critical habitat designation may curtail or prevent continued use of these areas for military purposes, void taxpayer investments in infrastructure to support military activities at these locations, and require costly investments elsewhere to accomplish training requirements.''

Military experience in recent combat situations has demonstrated that about 70 percent of combat casualties are due to lack of or insufficient training (Draft Economic Analysis, page 6–43). Modifications to training necessitated by a critical habitat designation could reasonably result in less realistic training methods. The Service is not in a position to determine how many such restrictions, perhaps individually not having a significant impact, may be incurred before training for Navy and

other military personnel would be degraded, whether the military might feel required to switch its training elsewhere, at considerable cost to taxpayers, or whether alternative areas are in fact available.

In addition to possible restrictions on training and operations, the Navy has expressed concern over the delay inherent in having to undertake additional consultations. Critical habitat designations are likely to mean that certain Navy projects which currently receive categorical exclusions from National Environmental Policy Act (NEPA) requirements may be required to prepare NEPA documentation, in addition to the section 7 consultations. This can result in additional costs of between $20,000 to $100,000 and delays of six to nine months per project. If the project in question is military training, these delays could mean forces being deployed with inadequate training.

(3) The Benefits of Excluding Navy Lands From Critical Habitat Outweigh the Benefits of Inclusion

Based on the above considerations, we have determined that the benefits of excluding Navy lands on Guam from this critical habitat designation, including benefits to national security, outweigh the benefits of including them.

Exclusion of Navy Lands Will Not Cause Extinction of the Species

We conclude that the Navy's management plans and conservation efforts will provide long-term conservation benefits greater than those which would be provided if these Navy lands were designated as critical habitat. The Refuge Overlay agreement and other conservation measures described above have provided, and will continue to provide, tangible, beneficial, proactive conservation measures that will reduce the likelihood of extinction of these three species and increase the likelihood of their long-term survival.

Private and Territorial Lands on Guam

We have excluded the approximately 4,930 acres (1,995 hectares) of private and territorial lands proposed by us as critical habitat on Guam under section 4(b)(2) of the Act. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. The analysis which led us to the conclusion that the benefits of excluding these areas exceed the benefits of designating them as critical habitat, and will not result in the extinction of the species, follows.

In this section, we first discuss the background and history of critical habitat proposals on Guam, and summarize the Natural Resource Management Plan that was developed by the Government of Guam and issued for public comment by us on June 2, 2004 (69 FR 31073). After this introduction, we analyze the benefits of including private and Government of Guam lands within the critical habitat designation and the benefits of excluding these areas.

Background: In 1991, the Service first issued a proposal for critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher (56 FR 27485). Although initially requested by the Governor of Guam, once the proposal was issued, both the Governor and legislature strongly opposed it. In 1993, the Guam National Wildlife Refuge was established by cooperative agreement with the Navy and Air Force. Based on establishment of this overlay refuge, the Service withdrew the critical habitat proposal in 1994. 59 FR 15696 (1994).

However, excess military land at Ritidian Point in Guam was then transferred to the Service under the Federal excess property regulations for inclusion in the refuge. Federal ownership and regulation of land on Guam has been a particularly sore point in the relationship between the Federal Government and the Government and people of Guam since extensive condemnations of land on Guam for military purposes occurred in the years following World War II.

In this case, there was some level of expectation on Guam that the Ritidian Point lands would be made available to the Government of Guam, or returned to the prior owners, and their transfer to the Service provoked an extensive and long-lasting public outcry and created a barrier to constructive working relations between the Government of Guam and the Service. For many years there were regular demonstrations, at times approaching riots, against the Refuge, accompanied by threats against refuge staff to the point that law enforcement personnel had to be assigned for their protection, and destruction of refuge property.

In addition, the Legislature of Guam enacted legislation in reaction to this transfer (21 GCA 68950), which provided in part that it was the policy of the Government of Guam to seek the termination of Federal ownership of the wildlife refuge, and transfer of the property to Guam; that Federal jurisdiction over ''local fauna, flora and habitat'' be opposed, that neither the Government of Guam or any of its agencies might express approval of the existence of the refuge or enter into any agreements which could be construed as providing support for the continuation of the refuge, and that ''the government of Guam hereby disestablishes all Federal designations of critical habitat or wildlife refuge as an act of sovereignty.'' Although the latter provision conflicts with Federal law and is therefore invalid, it is an express statement of local opinion regarding critical habitat designations on Guam.

Natural Resource Management Plan for lands on Guam (Plan): The Government of Guam developed a natural resource management plan as an alternative to critical habitat and submitted it to the Service on April 1, 2004. While Guam termed the plan an ''Integrated Natural Resource Management Plan,'' we are labeling it a natural resource management plan, or Plan, here to avoid confusion with the Integrated Natural Resource Management Plans developed by the military pursuant to the Sikes Act, which have a variety of statutory requirements associated with them that are not applicable to Guam's plan, and which are also discussed in this notice. We issued the Plan for public review and comment as noted above.

The Guam Plan proposes making available 4,548 acres of Government of Guam land to the recovery of the listed species, and a large number of general and specific actions related to increasing public awareness of the needs of the species, and habitat management and enhancement, monitoring and training to assist in the recovery of the listed species for which critical habitat is being considered.

We agree with the Government of Guam that its implementation would be beneficial for the listed species. In general, recovery of these species will require active management that includes but is not limited to brown treesnake control, habitat protection and enhancement, and translocation or reintroduction of species to establish several self-sustaining populations. Failure to implement these management measures would preclude recovery of the Mariana crow and Guam Micronesian kingfisher and increase the risk of extinction for Mariana fruit bat. It is unlikely that these efforts can occur successfully without the support of the Government of Guam and without the use of Government of Guam and/or private lands. We must also note that the Plan is far less detailed and certain of implementation than the Integrated Natural Resource Management Plans (INRMPs) developed by the Navy and the Air Force for their lands on Guam, and if judged by the standards established for INRMPs, it would likely not be approved. However, we believe

that as a sign of the desire of the Government of Guam to increase cooperation with the Service on the conservation and recovery of these species, particularly when considered against past relations, it is a significant positive step.

It is clear from the record that the designation of critical habitat could be expected to adversely impact our working relationship with the Government of Guam. The record indicates and we agree that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into Guam's affairs, and likely be viewed by a sizeable segment of the population and of the legislature as ''another Federal land grab.''

Our working relationship with the Government of Guam has been improving in recent years in relation to natural resource programs of mutual interest, following the disruptions and antagonisms that arose over the previous critical habitat proposal, as discussed above. This relationship provides a benefit to all parties involved in the conservation of the listed species. Those benefits include Guam applying for and receiving a Safe Harbor grant from the Service for the control of brown treesnakes and reintroduction of the Guam rail, a considerable lessening of the protests against the refuge, and Guam undertaking several recovery actions for these species on its own and in cooperation with the Service and with the military.

Analysis: The Benefits of Exclusion Outweigh the Benefits of Inclusion

(1) Benefits of Inclusion

Few additional benefits would be derived from including the Guam lands in a critical habitat designation for the three species beyond what would be achieved through the implementation of Guam's Plan and continuation of their existing conservation efforts. The principal benefit of any designated critical habitat is that activities in and affecting such habitat with a Federal nexus require consultation under section 7 of the Act and insure that Federal agency actions are not likely to destroy or adversely modify such habitat. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. However, we conclude that few regulatory benefits to the species would be gained from a designation of critical habitat on these lands. This is because as shown in the Economic Analysis, there are likely to be few, if any, development projects with the required Federal nexus which would impact the proposed critical habitat, and because the loss of essential habitat on Guam territorial and private lands is not the primary threat to these species. With respect to future conservation actions undertaken by the Government of Guam under its Plan, since the use of existing Federal funding is integrated into the projects proposed, the section 7 consultation process will still be utilized to review these projects for their consistency with the Recovery Plan and avoidance of jeopardy to the species. The consultation process after a designation of the Guam territorial and private lands as critical habitat is unlikely to result in significant additional protections for the three species.

Another possible benefit is that the designation of critical habitat can help to educate the public regarding potential conservation value of an area, and may focus efforts by clearly delineating areas of high conservation value for the three species. Any information about these species and their habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. The Government of Guam is currently working with the Service to address habitat and conservation needs for the species, and if nothing disrupts the relationship, we anticipate that they will greatly increase their efforts, as proposed in their Plan. The public educational benefits that might flow from the designation have almost certainly already been accomplished due to the intense controversy over the proposed designation.

For these reasons, then, we believe that designation of the Guam territorial and private lands as critical habitat would have few additional benefits for the three species.

(2) Benefits of Exclusion

The benefits of excluding the Guam lands from designated critical habitat are more significant. They include: (1) The maintenance of effective working relationships to promote the conservation of these species and their habitat; (2) the allowance for continued meaningful collaboration in projects contributing towards recovery of these species; and (3) the provision of conservation benefits to the Guam lands that might not otherwise occur.

The designation of critical habitat would be expected to adversely impact our working relationship with the Government of Guam, as noted above.

In testimony provided for a public hearing on the critical habitat proposal, former Governor Carl Gutierrez stated (with reference to the prospect of military lands being exempted from the designation and Guam land not being exempted): ''Such unequal standards are likely to increase the levels of non-cooperation between the Service and the Government of Guam.''

In his official comment to the Service on the critical habitat proposal, Governor Felix Camacho stated ''This action has the potential to unravel much of the recovery infrastructure we have built on Guam over the past twenty years including the GNWR [Guam National Wildlife Refuge].'' This comment not only underscored the likely adverse impact that would arise from a designation, but raised for the first time the possibility of Guam accepting the existence of the refuge. Subsequently, the news media reports the Governor has publicly raised the issue of repealing the anti-refuge statute.

Similarly, in his letter transmitting the Plan to the Service, Governor Camacho stated in part: ''As you are aware, this [the proposed critical habitat designation] has been a very sensitive issue and has impacted our programs for many years. I sincerely hope that this effort is the beginning of healing those wounds and strengthening the partnerships between us. * * * I am looking forward to working through the necessary steps to make this plan come to fruition.''

The Service's then-Field Supervisor for the Pacific Islands Fish and Wildlife Office relayed similar concerns over likely adverse reactions to a critical habitat designation to the Washington office following the initial decision to exclude Navy and Air Force lands from the critical habitat proposal, as discussed above. ''The final CH will consist primarily of GovGuam/CNMI and private lands, with a little bit of fee-simple FWS refuge land. Many local Guamanians and Chamorro activists, who are very outspoken at our public meetings and who have rioted against the Federal government in the recent past, will likely use this issue to continue to agitate against the Federal government on Guam. They complain that they are treated differently than the Feds and the military, and they may use this decision to support and press their claim.'' (P. Henson, USFWS, *in litt.* 2003).

For these reasons, we believe that our working relationships with the people and Government of Guam could well be enhanced if the Guam lands are excluded from the designation of critical habitat for these species, and are likely to be effectively eliminated if they are included.

In addition, as noted above, recovery of these species will require active management that includes but is not limited to brown treesnake control, habitat protection and enhancement, and translocation or reintroduction of species to establish several self-sustaining populations. Not undertaking these measures would preclude recovery of the Mariana crow and Guam Micronesian kingfisher and increase the risk of extinction for Mariana fruit bat. It is unlikely that these efforts can be successfully accomplished without the support and cooperation of the Government and people of Guam, and the designation of critical habitat is, as shown above, likely to preclude that support and cooperation. Conversely, not designating it is likely to generate increased cooperation and support, as shown by the Government of Guam's development and submission of its Plan, and the comments of the Governor accompanying its transmittal.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

In summary, the benefits of including the Guam territorial and private lands in the critical habitat designation are limited to a potential benefit gained through the requirements to consult and avoid adverse modification under ESA section 7 where a Federal nexus exists, and potential educational benefits. However, as discussed above, for the Guam lands these benefits would be minimal or have already occurred. The benefits of excluding these areas from being designated as critical habitat for these species are more significant, and include continued and improved cooperation between the Service and Guam towards the conservation and recovery of the species, without which recovery is unlikely to occur, and encouraging the continued development and implementation of the conservation measures outlined in their Plan as specific steps in that direction.

They also include avoiding the likely termination of cooperation as a result of public and legislative hostility to a designation, avoiding a reinitiation of public hostility towards the refuge, the primary purpose of which is the conservation of the species for which the critical habitat was proposed, and avoiding the risk that this hostility towards the Service might spill over onto hostility towards the conservation and recovery of these species.

We view the preservation and enhancement of good working relations with Guam, and their continued and increased involvement in the recovery efforts for these species, as a substantial benefit to which we give considerable weight, and without which reintroduction and recovery of these species is unlikely to occur. We accordingly find that the benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas.

(4) The Exclusions Will Not Result in Extinction of the Species

As noted above, the Service may exclude areas from the critical habitat designation only if it is determined, ''based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.'' Here, we have determined that exclusion of the Guam lands from the critical habitat designation will not result in the extinction of the three species.

First, the primary threat to the species is predation by the non-native brown tree snake, not destruction of habitat (Savidge 1986, 1987; USFWS 1990a, 1990b, 2004a, in prep; Wiles *et al.* 1995). Second, the Economic Analysis found few projects likely to adversely modify the species' habitat and having the required federal nexus for consultation under section 7 of the Act were likely to occur, so that section 7 benefits from a designation, and impacts to section 7 protections from a large exclusion, would be limited.

Thirdly, the Government of Guam has proposed a natural resource management plan with valuable conservation objectives for these species, and further proposes entering into an agreement with the Service and other interested parties to carry out the Plan. Guam has offered to undertake far greater conservation measures on these areas than would be available through the designation of critical habitat. Lastly, in the event Guam does not follow through on its proposals, we retain the ability to designate critical habitat on Guam.

Accordingly, we have determined that the Guam territorial and private lands should be excluded under subsection 4(b)(2) of the Act because the benefits of excluding these lands from critical habitat for these species outweigh the benefits of their inclusion and the exclusion of these lands from the designation will not result in the extinction of the species.

We recognize that between this exclusion and those provided to the military lands initially considered for inclusion, we have excluded most of the lands initially proposed for designation as critical habitat for these species. However, Congress expressly contemplated that exclusions of large portions of proposed critical habitat might occur when it enacted the 4(b)(2) exclusion authority. The accompanying Committee Report, House Report 95–1625, stated on page 17:

''Economic and any other relevant impact shall be considered by the Secretary in setting the limits of critical habitat * * * The consideration and weight given to any particular impact is completely within the Secretary's discretion. * * * The Committee expects that in some situations, the resultant critical habitat will be different from that which would have been established using solely biological criteria. In some situations, no critical habitat would be specified. * * *''

We accordingly believe that these exclusions, and the basis upon which they are made, are fully within the parameters for the use of section 4(b)(2) set out by Congress.

Summary of Comments and Recommendations

In the proposed rule published on October 15, 2002 (67 FR 63738), we requested all interested parties submit comments on the proposal by December 16, 2002. We also contacted all appropriate Territorial, Commonwealth, and Federal agencies; landowners; and other stakeholders and invited them to comment. In addition, we solicited comments from nine biologists, all with expertise in the fields of wildlife biology and conservation biology to provide peer review of the proposed critical habitat designation. On December 5, 2002, we published a notice in the **Federal Register** extending the comment period to January 6, 2003 (67 FR 72407). On January 28, 2003, we published a notice to reopen the public comment period to February 18, 2003, in recognition of the damage and hardship sustained by Guam and Rota from Supertyphoon Pongsona (68 FR 4160). This period allowed more time for submission of comments on the proposed rule and draft economic analysis. In addition, on June 2, 2004, we published a notice to reopen the public comment period to July 19, 2004, to allow interested parties to consider and comment on the Government of Guam's proposed alternative to critical habitat designation (69 FR 31073).

Seventy-two individuals, organizations, or government entities provided written and/or oral comments during the comment periods. Comments were received from 2 Federal agencies, 9 Territory or commonwealth agencies or elected officials (including the current (Felix Camacho) and previous (Carl Gutierrez) Governors of Guam), 53 private organizations or individuals,

and 8 peer reviewers. We received oral testimony from 20 individuals on Guam and 8 individuals on Rota during public hearings. Ten of the individuals providing oral testimony also provided written comments or a copy of their testimony. The remaining 33 individuals or organizations provided only written comments. We reviewed all comments received for substantive, relevant issues and new data regarding critical habitat and the three species for which critical habitat was proposed. Peer reviewer comments are summarized separately in the next section. Public comments are grouped into four general issues relating to the proposed critical habitat determination and draft economic analysis and are addressed in the summary below.

Peer Review

We solicited independent opinions from a total of 33 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region, or the principles of conservation biology. During our development of the proposed rule, we sent draft maps of important habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher to 29 of those reviewers and received responses from 9. In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited peer review of the proposed rule from 10 individuals, 6 of whom had reviewed the habitat maps earlier. Of those 10, we received responses from 8. Peer reviewers included experts from the Air Force, Philadelphia Zoo, Guam Department of Agriculture, CNMI Division of Fish and Wildlife, Smithsonian National Zoo, BirdLife International—Fiji, U.S. Geological Survey (Forest and Range Ecosystem Science Center, Oregon; Fort Collins Science Center), Lincoln Park Zoo (Chicago, Illinois), Colorado State University, Virginia Polytechnic Institute and State University, and private biological consultants.

All eight peer reviewers thought our methods for designating critical habitat were sound, the best available scientific information was used, and the relevant scientific literature, reports, and recent research were summarized adequately. All eight also felt that inclusion of currently unoccupied areas and of degraded areas with restoration potential was justified and well supported, and that the definition of primary constituent elements and the criteria used to identify the proposed critical habitat were comprehensive, valid, and justified. All eight reviewers generally supported the draft delineation of critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher on Guam and for the Mariana crow on Rota.

Five peer reviewers stated that we had identified in the proposed rule an ecologically appropriate configuration of habitats and geographic areas. Five stated that this configuration includes sufficient area overall to support the long-term conservation of these three species, though several also noted it would be difficult to justify changing the boundaries significantly. Two said the amount of critical habitat proposed was the minimum necessary to support the long-term conservation of the species. Four reviewers stated that the inclusion of certain Government of Guam and private lands is justified by the quality of the habitat in those areas. Two reviewers stated that the designation of critical habitat is necessary for the recovery of these three species despite the management challenges presented by the brown treesnake, and one reviewer emphasized that, in addition, brown treesnakes on Guam and rats and feral cats on Rota must be effectively controlled as part of the long-term conservation of the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher. One reviewer observed that designation of critical habitat is especially important for the crow and kingfisher on Guam because, other than the very small crow population on Andersen Air Force Base, these species are not present. One reviewer particularly supported our recognition that the Guam Micronesian kingfisher will need to have two populations on Guam, and hence habitat in the south as well as in the north, for the species to withstand chance occurrences that could extirpate a single population. Two reviewers commended our reference to studies conducted on related taxa in other locations and, at the same time, our caution in applying the results of such studies to the Mariana Islands. Responses to peer reviewer comments are included below with our responses to public comments.

Issue 1: Biological Justification and Methodology

(1) *Comment:* Three reviewers questioned whether we had identified sufficient critical habitat for the Mariana crow, given the large territory size of this species. These reviewers also stated their opinion that the population goals identified in the draft revised recovery plan for the crow seem to be too low.

Our Response: The Service used published and unpublished information about the habitat requirements of the Mariana crow to define the primary constituent elements (PCEs) for this species, and we identified areas on Guam and Rota containing these habitat characteristics. We used recovery criteria drafted by our Mariana crow recovery team and information about territory size to calculate the amount of area needed to support viable populations to determine the boundaries of critical habitat for the Mariana crow on Guam and Rota. The recovery team drafted the population goals for recovery of the species based on population viability analyses that included the best data available on the demography and life history of the crow and on its habitat parameters.

(2) *Comment:* Two commenters stated that the existing conservation areas on Rota provide sufficient habitat for the Mariana crow and that the crow population on the island doesn't require more than 1,500 or 2,000 acres.

Our Response: Our calculation of the amount of habitat required to support a viable population of Mariana crows on Rota, which exceeds the area encompassed by existing conservation areas on the island, was based on the best available data on the crow's territory size and on the recommendations of our Mariana crow recovery team. Please see the section of this rule entitled ''Criteria Used To Identify Critical Habitat'' for more details.

(3) *Comment:* One reviewer questioned whether we had identified sufficient critical habitat for the fruit bat, given the data we present on the wide-ranging foraging habits of this species.

Our Response: Our delineation of critical habitat for the Mariana fruit bat was constrained by the extent of forest containing the primary constituent elements needed by bats, *i.e.*, food plants and areas sufficiently remote to provide adequate roost sites. Although bats do range widely when they forage, the presence of the PCEs, and hence the quality of the foraging range, is variable. For example, the large areas dominated by tangantangan do not provide foraging habitat for fruit bats. These therefore were not included in critical habitat.

(4) *Comment:* One peer reviewer and one commenter suggested that the Urunao and Jinapsan areas in northern Guam, and the cliff faces in these areas and at Ritidian Point, should be included in critical habitat because bats use these areas, they provide a buffer for the historical fruit bat colony sites along the north coast, and they contain the PCEs for the Mariana crow and Guam Micronesian kingfisher. A commenter asked why lands below the cliffline are

included in critical habitat in some areas and not in others.

Our Response: We agree that some of the Jinapsan and Urunao private lands do contain the PCEs for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher, but some of these lands were not included in the proposed critical habitat because these lands were degraded, and we determined that they were not essential to the long-term conservation of these species. For this same reason, we included in the proposed critical habitat some areas below the cliffline and not others (*i.e.*, not all lands below clifflines are essential to the long-term conservation of these species). We agree with the reviewer and commenter, and in this final rule, we have included all of the Guam National Wildlife Refuge lands at Ritidian Point in critical habitat, including the cliff faces. After reviewing those small areas at Urunao and Jinapsan that were included in the proposed critical habitat, in this final designation we have determined that those private lands also are not essential to the conservation of these species. Although they do contain the PCEs, these lands are not included in the critical habitat designation.

(5) *Comment:* One reviewer stated that the quality of the remaining forest on Guam has declined since the 1990 recovery plans (USFWS 1990a, 1990b) defined ''essential habitat'' for Guam's endangered birds and bats. This decline has resulted from increased populations of feral pigs, deer, and carabao and encroachment by invasive alien plants, both of which exacerbate the natural disturbance caused by typhoons. The reviewer suggests that the critical habitat for the Mariana crow be extended along the northwest and northeast of Guam to include the same areas proposed for the kingfisher and fruit bat.

Our Response: We acknowledge the likelihood that forest quality has declined on Guam since 1990, but without detailed documentation of this decline, we are unable to assess it in relation to the PCEs for the Mariana fruit bat, Mariana crow, or Guam Micronesian kingfisher. We thus cannot calculate how much this decline in habitat quality would, for example, influence territory size for the Mariana crow or Guam Micronesian kingfisher in order to justify a commensurate increase in the amount of habitat deemed essential for the long-term conservation of these species. However, if new information becomes available about the quality of this habitat and its adequacy for the conservation of these species, we will consider amending this final critical habitat rule.

(6) *Comment:* One reviewer observed that we did not adequately articulate the justification for including coconut plantations in critical habitat.

Our Response: While a coconut plantation does not contain all of the primary constituent elements for all three species, coconut palms provide some resources for them, and we identified some unoccupied disturbed areas as essential to these species because they do contain some PCEs for the species, have high restoration potential, and/or provide connectivity between areas of high quality forest. Guam Micronesian kingfishers were documented to excavate nest cavities in coconut palms in coastal areas, and Mariana fruit bats and Mariana crows have been documented to forage in coconut-dominated forests.

(7) *Comment:* One reviewer asked why the Sabana on Rota was not identified as critical habitat for the crow.

Our Response: Surveys conducted on Rota in 1982, 1987, 1994, 1995, and 1998 indicate that crows do not use the upper elevations of the Sabana (Engbring *et al.* 1986; Engbring 1987; USFWS unpubl. data). We conclude that this area does not contain the PCEs for the crow, and we therefore do not include it in critical habitat for the Mariana crow. We have, however, included areas along the slopes of the Sabana that do contain the PCEs and are considered essential to the long-term conservation of the Mariana crow.

(8) *Comment:* Several commenters and one reviewer expressed concern that critical habitat designation could result in the deliberate harassment of the crow, which already is disliked locally and considered a pest. One reviewer stated that persecution of crows that may result from the designation of critical habitat for the Mariana crow on Rota is a serious concern because adult survivorship is the demographic variable with the greatest influence on the viability of the crow population.

Our Response: When we reviewed information about persecution (intentional harm or harrassment) of crows on Rota for our prudency determination, we found we had insufficient evidence to determine that critical habitat for the crow on Rota was not prudent because of an increased risk of take. Because we do not have documentation of significant harassment of crows on Rota, we are again unable to use this concern as justification for excluding Rota from critical habitat.

(9) *Comment:* Numerous commenters, including the previous Governor of Guam, stated their opposition to critical habitat on the grounds that it does not address control or eradication of the introduced brown treesnake on Guam. Predation by the brown treesnake is commonly accepted as the primary cause of decline in the Mariana crow and Guam Micronesian kingfisher on Guam and is believed to have contributed to the decline of the Mariana fruit bat on Guam, and these commenters questioned the value of designating critical habitat for these species before this major threat is removed.

Our Response: The continued need to address threats to an endangered species does not obviate our statutory requirement to designate critical habitat. Controlling predators is a conservation issue separate from designating critical habitat on Guam. When a species is considered for listing under the Act, we assess the status of the species according to five factors specified in section 4(a)(1) of the Act. The three species for which we are designating critical habitat were listed as endangered in 1984, because of the effects of all five (49 FR 33881); therefore, all five must be addressed to recover these species. The loss of native habitat on Guam, predation by nonnative animals, and poaching (for the Mariana fruit bat) were particularly identified as the dominant factors leading to their decline.

Addressing each of these threats to the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher entails a variety of activities. While efforts to control the brown treesnake continue (including trapping, research on the treesnake's physiology and ecology, and the development of new toxicants and methods of delivery), it is vital that habitat for Guam's native wildlife be safeguarded for the future. Brown treesnakes may prey upon other animals, including native birds and bats, but they do not affect the structure of Guam's native forests, which harbor the primary constituent elements for the three listed species regardless of the presence of snakes.

(10) *Comment:* Two commenters observed that critical habitat will benefit brown treesnakes as well as the birds and fruit bat by protecting habitat.

Our Response: Efforts to control the brown treesnake on Guam will not be impeded by critical habitat designation. These efforts will take place within critical habitat when researchers and land managers determine control measures are appropriate, as they have taken place previously in areas that are

inhabited by listed species. Brown treesnake research or control experiments in critical habitat will include consultation with the Service when necessary under section 7 of the Act, as they do now when they are conducted in areas inhabited by the Mariana crow, Mariana fruit bat, or any other listed species.

(11) *Comment:* Two commenters asked why the Service does not designate critical habitat for these species on unoccupied islands, for example, the northern islands in the CNMI, instead of on Guam and Rota.

Our Response: This final rule implements the requirement of the Act to designate critical for these three listed species. Of these three species, the only one known to occur in the uninhabited northern islands in the Marianas is the Mariana fruit bat. Because the fruit bat currently is listed as endangered only on Guam and is not listed in the CNMI, we cannot designate critical habitat for the bat in the CNMI. To the best of our knowledge, Mariana crows and Micronesian kingfishers have never occurred on those islands, and we have no biological justification for identifying critical habitat for Mariana crows and Guam Micronesian kingfishers on those islands.

(12) *Comment:* Two commenters suggested that widespread use of pesticides by the military following World War II may have been a leading cause of the decline and extinction of Guam's birds, and the commenters asked whether this possibility has been studied.

Our Response: The effect on Guam's wildlife of widespread DDT use between the 1940s and 1960s has been investigated to some extent (Baker 1946; Drahos 2002), but the results have been equivocal (Diamond 1984; Grue 1985). Although predation and habitat loss are the accepted leading causes of the loss of Guam's native species, it is possible that DDT contributed somewhat to the early declines, particularly of insectivorous species such as the endangered Mariana swiftlet (Aerodramus bartschi). It is important to note that DDT would have affected populations of introduced predators as well, either through toxicity or reduction of the prey base. Because these effects were not measured at the time, it is difficult to sort out the relative impacts of the pesticide on Guam's native birds and on the nonnative mammals and reptiles that preyed upon them.

(13) *Comment:* Two commenters, including the acting Commissioner of the Marianas Public Land Authority, stated that because one of our major sources of scientific information (the revised recovery plan for the Mariana crow) is in draft form, the Service has not used the best available scientific and commercial data, and furthermore the Service has used information that may be misleading or incorrect.

Our Response: The draft revised recovery plan for the Mariana crow contains the best and most recent data on various aspects of the life history and habitat requirements of the Mariana crow. The draft revised recovery plan has not yet been through the Service's peer review process or been approved by the Regional Director, but the information compiled in this document comes from a wide variety of published and unpublished sources that have been appraised by our Mariana crow recovery team. This team is comprised of independent, scientific experts who are well qualified to judge the value and accuracy of the data and other information in the draft revised recovery plan, including data generated by individual recovery team members.

(14) *Comment:* Two commenters asked how we know that the three species will stay within designated critical habitat.

Our Response: Critical habitat is not intended to create a preserve or protected area in which a particular listed species is somehow confined. Rather, the delineation of critical habitat is based fundamentally on our knowledge of which habitat components each species requires to carry out its life functions, and thus where the species have occurred naturally. Critical habitat, therefore, identifies those areas where the listed species are most likely to occur and to thrive, not to areas where they should be limited.

(15) *Comment:* Two commenters asked whether Service personnel had trespassed on private property in the process of determining map boundaries for critical habitat on Guam.

Our Response: Service biologists did not trespass on private property at any time. The development of the proposed critical habitat boundaries was based primarily on analysis of maps and aerial photographs from the U.S. Geological Survey and IKONOS satellite imagery, review of scientific literature, our own knowledge of the area, and discussions with other scientists familiar with these three species and with Guam and/or Rota. In addition to previous fieldwork, we visited Guam just prior to beginning development of the proposed rule, met with representatives of government agencies, and toured military bases and other lands where we obtained authorized access.

(16) *Comment:* There is no biological basis for designating critical habitat for the Mariana crow on Rota because the crow population on that island is not presently limited by the availability of habitat, and the size of the population currently exceeds the number of breeding pairs needed for recovery, as specified in the draft revised recovery plan.

Our Response: The purpose of critical habitat designation is to identify areas containing the primary constituent elements necessary for a listed species to carry out its life functions and to identify the quantity of those areas that are ''essential to the conservation of the species,'' irrespective of whether those areas are occupied by the species or whether the species occupies a particular area at carrying capacity.

(17) *Comment:* The Service has not addressed the adverse impacts of jet noise on fruit bats and birds.

Our Response: The Service conducted a study in 1992–1995 to assess the effect of aircraft overflights on Mariana fruit bats and Mariana crows (Morton 1996). The results of this study did not indicate that aircraft overflights directly contributed to nest failure in Mariana crows, but the results did suggest that noise or visual disturbance in proximity to a crow nest or fruit bat colony may disturb the animals and cause them to leave nests or roost sites. Nevertheless, the presence of auditory or visual human disturbances does not affect the presence of the primary constituent elements used to define critical habitat.

(18) *Comment:* The inclusion of forest at Jinapsan in critical habitat is not appropriate because this habitat is on the windward side of the island and prone to high damage from typhoons.

Our Response: The forest at Jinapsan was excluded from final critical habitat designation. However, this forest is considered essential to the conservation of the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher because it contains the primary constituent elements for these species. The forest ecosystems of the Mariana Islands have evolved with typhoons, a typical if irregular natural disturbance in the archipelago. A particular windward forest area may be affected more than other areas by typhoons, and this may reduce its value for human activities, but it does not remove the value of the area as habitat for native species.

(19) *Comment:* Why did the Service include unoccupied habitat in the proposed critical habitat designation?

Our Response: Section 3(5)(A)(ii) of the Act provides a definition for unoccupied critical habitat: ''specific

areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.'' In many cases, the population of an endangered species is so small that the area currently occupied by the species is not enough to support a larger, self-sustaining population. On Guam, the small population of the Mariana crow and the absence of the Guam Micronesian kingfisher provide extreme examples of this situation.

Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within their historical range. Because of the very limited current range of the Mariana crow on Guam and the extirpation of the Guam Micronesian kingfisher from the wild, identifying only occupied areas as essential clearly would not meet the conservation requirements of the species. For example, the recovery goals for the Mariana crow call for a self-sustaining population of at least 75 pairs in northern Guam. The area occupied by the current population of 10–12 Mariana crows would be too small to sustain a population of 75 pairs of crows.

When designating unoccupied habitat for these species, we first evaluated lands that are suitable for each species. Of this suitable habitat, we determined what areas are essential for the conservation of each species using the guidelines outlined in the recovery plans (*i.e.*, areas that contain one or more of the primary constituent elements and that are either in good condition for conservation efforts or could be made good through appropriate management actions) and would provide space needed by the species to reach our recovery goals. These goals are as follows: At least two permanent, major colonies of Mariana fruit bats in northern Guam and one in southern Guam, each harboring at least 400 bats, and a minimum total bat population of 2,500 on the island (USFWS 1990a); 75 pairs of Mariana crows each in northern Guam, southern Guam, and on Rota (USFWS in prep); and 1,000 Guam Micronesian kingfishers in northern and southern Guam (USFWS 2004a).

Subsequent to the proposed rule, exclusions were made in northern and southern Guam (*see* ''Exclusions from Critical Habitat'' for details). The designated critical habitat on Guam is considered occupied by Mariana fruit bat and unoccupied by the Mariana crow and Guam Micronesian kingfisher. The designated critical habitat on Rota is considered occupied by the Mariana crow.

(20) *Comment:* The Service should designate 6,000 acres of critical habitat for the Mariana crow on the mainland United States instead of on Rota.

Our Response: The Mariana crow is only found, and to the best of our knowledge has only ever been found, on the islands of Guam and Rota in the Mariana Islands. Therefore, these islands are the only appropriate locations for designating critical habitat for these species.

(21) *Comment:* What criteria were used to determine which lands would be included in critical habitat?

Our Response: We refer the commenter to the ''Critical Habitat Designation'' section of the proposed rule and of this final rule.

In summary, as required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to identify areas that contain the physical and biological features that are essential for the conservation of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow. This information included: Peer-reviewed scientific publications (*e.g.*, Baker 1951; Jenkins 1983; Wiles *et al.* 1995; NRC 1997); published and draft revised recovery plans (USFWS 1990a, 1990b, 2004a, in prep); the final listing rule (49 FR 33881); unpublished reports by the Guam Division of Aquatic and Wildlife Resources (GDAWR), CNMI Division of Fish and Wildlife (DFW), and the Service (*e.g.*, Wiles 1982a; Engbring and Ramsey 1984; Morton 1996; Morton *et al.* 1999); aerial photographs and satellite imagery of Guam and Rota; personal communications with scientists familiar with the species and habitats; and comments received during public comment periods and in response to critical habitat outreach packages. Specific information we used from these sources includes estimates of historic and current distribution, abundance, and territory sizes for the three species, as well as data on resource and habitat requirements. From recovery plans, we considered the recovery objectives and the assessments of the habitat necessary to meet these objectives, as well as life history information.

(22) *Comment:* Why was the cargo drop zone on Andersen Air Force Base not included in critical habitat?

Our Response: Degraded habitats that have high restoration potential may be included in critical habitat designations. In this case, the area that has been completely cleared of vegetation for the Air Force's cargo drop training is likely to remain cleared for this purpose and therefore has little potential for restoration of the primary constituent elements for the three species.

(23) *Comment:* The previous Governor of Guam commented that the Service's criteria for including private lands in critical habitat was not applied evenly because lands with high economic value were deliberately left out to avoid a high estimate of economic impact.

Our Response: The development potential or economic value of lands was not considered in determining the boundaries of proposed critical habitat. These boundaries were based on biological criteria. Potential economic impacts were estimated subsequent to the delineation of proposed critical habitat.

(24) *Comment:* Why has the Service designated critical habitat for species that are extinct?

Our Response: We have not. In the proposed rule, the Service determined that designating critical habitat for the little Mariana fruit bat, Guam broadbill, and Guam subspecies of bridled white-eye is not prudent because these species likely are extinct. On February 23, 2004, the Service removed the Guam broadbill from Federal List of Threatened and Endangered Species due to extinction (69 FR 8116) and will consider delisting the remaining species in the future as staffing and funding resources allow. This final designation includes critical habitat for the Guam Micronesian kingfisher, a species that, while extirpated from the wild, is not extinct.

Issue 2: Policy and Regulations

(25) *Comment:* One peer reviewer stated that to designate critical habitat primarily on Federal lands is appropriate because consultation under section 7 of the Act applies to Federal agencies. Several commenters, including the acting Commissioner of the Marianas Public Lands Authority, asked that the Service exclude all private lands from the critical habitat designation. Two of these commenters asked why we include private lands if there is no Federal nexus to trigger section 7 consultation and if critical habitat does not provide substantial protection for these endangered species. Several commenters requested that we exclude private lands, access corridors to these private lands through Federal lands, Federal excess lands, and/or a range of specific properties on Guam and Rota from critical habitat. The commenters claim that such exclusions legally can be made because they will not result in the extinction of these species.

Our Response: It is true that consultation under section 7 takes place between Federal agencies, but this consultation is triggered by actions that are carried out, authorized, or funded by Federal agencies on state, Territorial, or private lands, as well as by actions on Federal lands. Therefore, the section 7 consultation aspect of critical habitat is not solely relevant to Federal lands.

Critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the long-term conservation of a species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. If activities on private lands designated as critical habitat do not involve any Federal funding or authorization, then the landowner should not be affected by the designation. There are, however, educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowners, land managers, and the general public about the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

We identify critical habitat based on biological and management criteria described in section 4(b)(2) of the Act, and we apply these criteria irrespective of land ownership and the potential for Federal involvement in development or other land use projects. We can also exclude lands from critical habitat under section 4(b)(2) of the Act. Although it is true that exclusions cannot be made if they will result in the extinction of the species, this is not the sole criterion that allows us to make an exclusion. We direct the commenters to the section of this rule entitled ''Exclusions from Critical Habitat'' for information about areas excluded from the final critical habitat designation.

(26) *Comment:* Several peer reviewers stated that future conservation projects may justify a reconsideration of the critical habitat boundaries, but existing conservation activities, including Integrated Natural Resource Management Plans (INRMPs) prepared by the U.S. Navy (Navy 2001) and U.S. Air Force (Air Force 2003), are insufficient to supplant the protections afforded by critical habitat designation. Furthermore, planned future conservation activities are either too far from implementation or do not address the recovery goals for these three species sufficiently to warrant exclusions from critical habitat of the lands involved in such current or planned projects.

Our Response: The Service fully complies with the Act in assessing potential exclusions from critical habitat designations. Please see the section of this rule entitled ''Exclusions from Critical Habitat'' for a description of the exclusions leading to this critical habitat designation.

(27) *Comment:* The military lands on Guam have the conservation benefits of the overlay refuge and are physically protected by high security and restricted access. The designation of critical habitat thus will not be a significant imposition to further development.

Our Response: We have excluded Air Force and Navy lands from this final designation. See the section of this rule entitled ''Exclusions from Critical Habitat'' for detailed discussion of why these areas have been excluded from the final designation.

(28) *Comment:* Two reviewers and several commenters stated that a Habitat Conservation Plan (HCP) for the Mariana crow on Rota would be preferable to the designation of critical habitat because the HCP would be a multilateral effort and thus more acceptable to the local community and government than critical habitat, a regulatory action imposed unilaterally by the Service. Several commenters asked what the status would be of critical habitat on Rota if the HCP were completed, whether it will still be possible to complete the HCP once critical habitat is designated, and whether the designation of critical habitat is taking place because the HCP isn't finished.

Our Response: We agree that the protective measures and actions of an HCP can be very effective in conserving important habitat features (*e.g.,* primary constituent elements). Completed HCPs have been excluded from critical habitat designations because of their management and protective measures or because there are greater conservation benefits in excluding HCPs from a designation. However, the lack of a completed HCP was not the reason for this critical habitat designation. The designation of critical habitat and the development of HCPs are independent regulatory processes that arise from different sets of circumstances and different sections of the Act. Under section 4(a)(3) of the Act, we are generally required to designate critical habitat for a species at the time it is federally listed as an endangered or threatened species, and in accordance with section 4(b)(2), on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying an area as critical habitat. Under section 10 of the Act, habitat conservation plans are developed to permit and provide mitigation for take of listed species associated with development and other projects on non-Federal lands. HCPs are undertaken at the discretion of non-Federal landowners, and the development of an HCP on Rota has been an ongoing process for nearly a decade. In 2002, the Service awarded $244,000 to the CNMI to support the completion of an HCP on Rota for the development of agricultural homesteads and the Mochong cultural center. In 2004, the Service awarded $339,522 to the CNMI to support the completion of an island-wide HCP for Rota. In the future, the completion of HCPs on Rota and the establishment of the associated mitigation areas may provide a basis for review and revision of the critical habitat boundaries on Rota.

(29) *Comment:* Several commenters, including the previous Governor of Guam, felt that the Service did not adequately inform local governments and agencies and private landowners about the pending critical habitat proposal or involve them in the process. Several commenters expressed a desire for the Service to hold more public meetings and hearings and stated that the format for the hearings was inappropriate and questions raised should have been answered there.

Our Response: We have made a significant effort to contact and inform local stakeholders on Guam and Rota and include them in the critical habitat process. We mailed information and other materials to private landowners using land ownership information and addresses obtained from the Government of Guam and the CNMI. We also attempted to meet and obtain input from many of the resource management agencies on Guam and in the CNMI that could be affected by a designation, including the Guam Division of Aquatic and Wildlife Resources and CNMI Department of Land and Natural Resources. We also attempted to contact representatives of the Chamorro Land Trust Commission (CLTC) and CNMI Board of Public Land regarding the pending critical habitat proposal.

The Service has done its best to solicit input from the local communities on Guam and Rota and provide opportunities for individuals to communicate their concerns and comments. Our court-ordered deadline for publishing a final decision on critical habitat did not leave time for additional meetings or hearings. We realize that the public hearing format is

frustrating because it is primarily a forum for individuals to submit their comments and have them entered into the record, not for discussion of concerns. Such discussion likely would prevent some comments from being recorded in the record due to time constraints. For this reason, the Service held public meetings the month prior to the hearings, so that individual questions could be answered. Please see the chronology of our outreach efforts in the ''Previous Federal Actions'' section, above.

(30) *Comment:* Several commenters, including the current and previous Governors of Guam and the Governor of the CNMI, urged the Service to seek alternatives to critical habitat, and some requested that a group including representatives of all the landowners and other stakeholders in land use and conservation be convened to discuss such alternatives.

Our Response: We have considered alternatives within the context of our determination that designating critical habitat is prudent for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher. On June 13, 2003, the Guam District Court granted a deadline extension to allow the Government of Guam time to develop an alternative to critical habitat designation on Guam. On June 5, 2004, the Government of Guam provided the Service a proposed alternative to critical habitat designation. After reviewing the Government of Guam proposal, we determined that the benefits of designating Government of Guam lands and private lands on Guam as critical habitat did not outweigh the benefits of excluding them from designation. Please see the ''Analysis of Impacts Under ESA 4(b)(2)'' section for details.

After the extension was granted on June 13, 2003, we also notified the Mayor of Rota and Mariana Public Land Authority that there was additional time to discuss potential alternatives to designation of critical habitat on Rota. However, we received no response from the CNMI on developing alternatives.

In addition to excluding Government of Guam lands and private lands on Guam, we excluded Air Force and Navy lands from critical habitat designation under sections 4(a)(3) and/or 4(b)(2) of the ESA, as amended by Section 318 of the fiscal year 2004 National Defense Authorization Act. Please see the ''Exclusions from Critical Habitat'' section for details.

(31) *Comment:* Conservation on the Mariana Islands would be better addressed through public-private partnership projects than through the designation of critical habitat.

Our Response: We have a legal obligation to designate critical habitat for listed species to the extent prudent and determinable. Some areas may be excluded from critical habitat, for example, under section 4(b)(2) of the Act. As previously stated, however, we will continue to work with landowners, and the potential exists for reviewing and possibly revising critical habitat boundaries in the future. Partnerships among private landowners, the Service, and conservation organizations are a highly effective conservation tool, and we welcome initiatives from private landowners to explore the potential for partnerships on their land. We refer interested parties to the **ADDRESSES** section of this rule and encourage them to contact the Pacific Islands Fish and Wildlife Office to inquire about the Conservation Partnerships program, which may have funding to support projects on private lands. Projects and management plans for private lands that include commitments to activities that will contribute to the long-term conservation of these three endangered species may warrant our future review of the critical habitat boundaries.

(32) *Comment:* The current and previous Governors of Guam stated that the Guam Conservation Initiative proposed by the Government of Guam was a better approach to the conservation of these endangered species and their habitats than the designation of critical habitat.

Our Response: To the best of our knowledge, the Guam Conservation Initiative is in draft or proposal form and is not a program that has been funded or instituted on Guam. We therefore had no basis for evaluating the potential for excluding Government of Guam lands based on the ''Guam Conservation Initiative.'' However, on June 5, 2004, the Service did receive a proposed alternative to critical habitat designation from the Government of Guam. We reviewed their proposal and excluded Government of Guam lands from critical habitat designation because the benefits of designation did not outweigh the benefits of exclusion. Please see the ''Analysis of Impacts Under Section 4(b)(2)'' section for a details.

(33) *Comment:* Several commenters, including the current and previous Governors of Guam, stated their belief that the designation of critical habitat will be detrimental to existing conservation activities because it will result in the loss of the overlay refuge on military lands on Guam and the associated cooperative agreements with the Air Force and Navy. It was also contended that critical habitat would result in the loss of funds and other resources that presently are used for conservation projects on these lands because these resources will be needed to complete section 7 consultations triggered by proposed actions within critical habitat.

Our Response: The Air Force and Navy lands were excluded from the critical habitat designation under sections 4(a)(3) and/or 4(b)(2) of the Act, as amended by Section 318 of the fiscal year 2004 National Defense Authorization Act. *See* ''Exclusions from Critical Habitat'' for a more detailed discussion of the exclusions.

(34) *Comment:* Numerous commenters, including the current and previous Governors of Guam and the CNMI Senate, expressed their concern that the designation of critical habitat will place a disproportionate regulatory burden on local governments and private landowners and that private landowners will be subject to stringent Federal regulations. These commenters also expressed concern that the designation of critical habitat will restrict owners' activities on their private lands, will ''lock up'' or restrict access to those lands (*e.g.,* the agricultural homestead lots on Rota), or result in the condemnation or confiscation of private lands and the transformation of public lands into nature preserves or zoos.

Our Response: Critical habitat designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other special conservation area. It does not allow government or public access to private lands and will not result in closure of the area to all access or use. A critical habitat designation does not constitute a land management plan. Rather, it triggers the requirement that Federal agencies must consult with the Service on activities they authorize, fund, or carry out that may affect critical habitat.

When local government or private landowners seek a Federal permit or Federal funding, the Federal permitting or funding agency must consult with the Service on actions that may affect listed species or designated critical habitat. The draft economic analysis and addendum identify the potential Federal actions that may result in consultations on the listed species and critical habitat on Guam and Rota over the next ten years. The regulatory burden of critical habitat designation, in the form of consultation under section 7(a)(2) of the Act, falls on Federal government agencies, not directly on local governments or private landowners. We anticipate that the majority of projects

on private or Commonwealth lands probably will go forward unimpeded because there will be no Federal nexus. In the rare case where a Federal project on private land is likely to result in destruction or adverse modification of critical habitat, the Service must provide, within a specified time period, reasonable and prudent alternatives that will allow the project to avoid adverse modification. Finally, we have never intervened in local land use proceedings in the CNMI and do not anticipate doing so in the future.

(35) *Comment:* The current and previous Governors of Guam commented that the military's INRMPs provide them with an alternative that can gain these agencies exclusion from critical habitat under the Act. Allegedly non-Federal landowners do not have that alternative.

Our Response: Air Force lands were excluded under section 4(a)(3) of the ESA, as amended by subsection (a) Section 318 of the fiscal year 2004 National Defense Authorization Act, because their INRMP provides a benefit to the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher (*see* ''Exclusions from Critical Habitat''). This section of the Act only applies to military installations. However, any landowner can develop a management plan to conserve essential habitat that may provide a basis for excluding lands from a critical habitat designation under the Act. We refer interested parties to the **ADDRESSES** section of this rule and encourage them to contact our Pacific Islands Fish and Wildlife Office to obtain additional information about developing management plans for listed species.

(36) *Comment:* The previous Governor of Guam stated that Executive Order 13175 establishes conditions for designation of critical habitat on tribal lands in the United States that are different from conditions for designation of the lands in unincorporated territories.

Our Response: We agree. Executive Order (E.O.) 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), pertains only to Indian or Alaska Native tribes as defined in the Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, and this Act does not include the Chamorro people. E.O. 13175 provides general guidelines for Federal interaction with these tribes and makes no mention of unincorporated Territories; therefore, E.O. 13175 has no relevance to this designation of critical habitat.

(37) *Comment:* The previous Governor of Guam commented that the lands at Ritidian Point not included in the designation must have low habitat value in the Service's view, and they therefore should be exchanged for lands at Falcona.

Our Response: Some of the Service-owned lands within the Guam National Wildlife Refuge were not included in the proposed designation because of a mapping error. All of Service-owned lands at Ritidian Point that are part of Guam National Wildlife Refuge are considered essential to the conservation of these species and are now included in this critical habitat designation.

(38) *Comment:* Two commenters stated that the amount of land designated on Guam as critical habitat for the Mariana crow amounts to as much as 100 times more land per crow than is currently used by each human resident of Guam.

Our Response: Critical habitat is designated based on the conservation needs of the species. This includes adequate area for foraging and breeding. The size and foraging characteristics of the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher necessitate sufficient area for adequate breeding sites and to obtain enough food to survive and reproduce. The designation of critical habitat does not preclude other uses of these lands.

(39) *Comment:* Several commenters stated that the Service cannot designate critical habitat on islands in the same way we do on continents; we must take into consideration the limited land base on islands and the proportion of the entire land base being designated.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. Changing the size of a critical habitat designation to meet a specified percentage of a given larger land area elsewhere would result in a designation that may be scientifically invalid.

(40) *Comment:* Andersen Air Force Base should be excluded from critical habitat because (a) the INRMP for the base provides substantial protections for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher and their habitat on Guam, (b) the Air Force has provided draft text to amend its INRMP to include more specific projects that will contribute to the long-term conservation of these species, and (c) the Air Force has agreed to conduct consultations under section 7 of the Act for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher and has agreed to maintain and improve the primary constituent elements for these species on its lands. Little additional benefit will accrue to these species with the designation of critical habitat other than the trigger for interagency consultation under section 7 of the Act. Furthermore, critical habitat designation may have a negative impact on the current conservation projects that benefit these species if resources are diverted to meet consultation requirements and/or if the Air Force removes its lands from the Guam National Wildlife Refuge.

Our Response: We have excluded Andersen Air Force Base from the final critical habitat designation pursuant to the provisions of Section 318 of the fiscal year 2004 National Defense Authorization Act.

(41) *Comment:* The INRMP for the Navy lands on Guam provides substantial protections for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher and their habitat on Guam, and these protections are superior to those that would be provided by critical habitat. This INRMP was prepared in cooperation with the Service, and the Service approved it. In the Cooperative Agreement establishing the Guam National Wildlife Refuge overlay on Navy lands, the Navy has agreed to conduct consultations under section 7 of the Act for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher and has agreed to maintain and improve the primary constituent elements for these species on its lands. Little additional benefit will accrue to these species with the designation of critical habitat other than the trigger for interagency consultation under section 7 of the Act. Furthermore, critical habitat designation may have a negative impact on the current conservation projects that benefit these species if resources are diverted to meet consultation requirements and/or if the

Navy removes its lands from the Guam National Wildlife Refuge.

Our Response: We have excluded the Navy lands from the final critical habitat designation under section 4(b)(2) of the Act. *See* ''Exclusions from Critical Habitat'' for a more detailed discussion of the exclusions.

(42) *Comment:* Two commenters, including the acting Commissioner of the Marianas Public Lands Authority, expressed a concern that the clearing of private land designated as critical habitat will constitute ''take'' and would therefore be a violation of section 9 of the Act.

Our Response: Clearing (*i.e.,* removal of vegetation) of any land designated as critical habitat does not automatically constitute violation of section 9 of the Act. Section 9 prohibits the taking of any wildlife species. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532 (19).

(43) *Comment:* Several commenters, including the acting Commissioner of the Marianas Public Lands Authority, requested more time to review the proposed rule and draft economic analysis after Supertyphoon Pongsona hit Guam and Rota on December 8, 2002. One commenter asked that we extend the final deadline for the rule.

Our Response: We reopened the comment period from January 28 to February 18, 2003, to allow the residents of Guam and Rota more time to provide their comments once basic services and infrastructure had been restored. An extension on the deadline for this final rule could be obtained only through a request submitted to the U.S. District Court for Guam. On May 30, 2003, the Government of Guam filed a motion to extend the deadline for publication of the final rule to allow time to develop an alternative to critical habitat designation on Guam. The deadline extension was granted by the Guam District Court on June 13, 2003. On April 5, 2004, the Government of Guam submitted their proposed alternative to critical habitat to the Service as ordered by the Guam District Court. The court ordered that this final rule be submitted for publication in the **Federal Register** no later than October 18, 2004.

(44) *Comment:* The Service should use the draft economic analysis in the determination of prudency for critical habitat.

Our Response: The first step in the critical habitat process, the proposed determination of whether or not a designation for any species is prudent, is a decision based on biological and conservation considerations, not the potential economic impacts of the designation. Furthermore, the economic analysis cannot be made in a detailed, quantitative fashion until maps of the proposed critical habitat are completed. As defined by regulation, prudency examines whether critical habitat would harm or benefit the species (*see* 50 CFR 424.12(a)(1)). If critical habitat is prudent, we look at all of the impacts of designating specific areas as critical habitat to see if the benefits of designation outweigh the benefits of excluding an area from critical habitat. Should we determine that critical habitat is not prudent because it will not provide additional conservation benefit to the species or will result in increased threat to the species, we would not conduct an economic analysis. When we do propose critical habitat, we then use the economic analysis to assess possible exclusions under section 4(b)(2) of the Act.

(45) *Comment:* Current enforcement of the Act on Rota is sufficient to protect the Mariana crow and its habitat.

Our Response: The Service is required by law to designate as critical habitat those areas which are essential to the long-term conservation of listed species, unless the economic or other impacts of designation outweigh the conservation benefits. All critical habitat designated on Rota is currently occupied by crows. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements of the designated area to an extent that its value for both the survival and long-term conservation of the Mariana crow is appreciably diminished (*see* ''Critical Habitat'' section of the rule for further discussion).

(46) *Comment:* Several commenters expressed their belief that designation of critical habitat for the Mariana crow on Rota will cause significant resentment in the local community and government, provide a disincentive for participation in voluntary conservation projects, and create obstacles to future crow conservation efforts on the island.

Our Response: We acknowledge that, despite the Service's outreach activities, considerable misapprehension remains about the impacts of critical habitat designation on land use on Rota. Nevertheless, absent documentation that the designation of critical habitat would increase the threat to the Mariana crow, or be offset by adverse economic or other impacts, we have no basis either for changing our prudency determination or for excluding lands on Rota from critical habitat.

We also reiterate that a critical habitat designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other special conservation area. It does not allow government or public access to private lands and will not result in closure of the area to all access or use. A critical habitat designation does not constitute a land management plan. Rather, it triggers the requirement that Federal agencies must consult with the Service on activities they take or fund that might affect critical habitat, and on Rota this requirement is already triggered by the presence of Mariana crows throughout the area designated as critical habitat.

We recognize that critical habitat is only one of several tools provided in the Act to accomplish long-term conservation of listed species and that this goal is best achieved through cooperation between the Service and the community. We hope that members of the Rota community interested in initiating conservation projects for the Mariana crow will be guided by this critical habitat designation to areas where their efforts will be of greatest benefit. We welcome ideas and proposals for conservation projects and will seek funding to support such projects. We continue to work closely with the people of Rota and the CNMI government to develop HCPs, and we have awarded the CNMI a total of $583,522 to facilitate this effort. We may reevaluate critical habitat boundaries after HCPs are completed.

(47) *Comment:* The sole basis for the Service's reversal of its 1991 determination (that designating critical habitat for these species was not prudent) appears to be losses that the Service has experienced in other, significantly different litigation.

Our Response: Our rationale for our determinations is presented in the proposed rule (67 FR 63738), under the section entitled ''Prudency Determination.'' With respect to Guam and Rota, the Service is obligated to comply with the decisions of the Ninth Circuit Federal Court of Appeals.

(48) *Comment:* As long as the little Mariana fruit bat, Guam broadbill, and Guam bridled white-eye are listed, they are entitled to the full protection of the Act, and the Service should propose critical habitat for them. The determination that critical habitat is not prudent for these species is a ''back door approach'' to delisting them.

Our Response: The assumption that all species listed under the Act still survive confuses the likely reality of extinction with the regulatory process of delisting extinct species under the Act.

Our statements in the proposed rule that these three species likely are extinct are based on the well-documented last sightings, decades ago, and records of these species and repeated, thorough efforts by scientists to find them. The final rule delisting the Guam broadbill was published on February 23, 2004 (69 FR 8116). The delisting of the other two is not currently scheduled. Given the Service's large listing and critical habitat workload, we must make priority decisions that offer the greatest benefit to those species that survive.

(49) *Comment:* If designating critical habitat is not shown to harm the (likely extinct) species, the Service is bound to designate their critical habitat.

Our Response: There are two criteria for determining that a critical habitat designation is not prudent. One is that the designation would result in taking or vandalism of the species, and the other is that critical habitat is not beneficial to the species. Designation of critical habitat will not benefit likely extinct species.

(50) *Comment:* The Service cannot exclude unoccupied areas from critical habitat based on ''special management'' under section 3(5)(A) of the Act because this criterion only applies to lands occupied by the species at the time of their listing and because this management cannot replace the benefits of section 7 consultation.

Our Response: We have excluded the Navy lands from the final critical habitat designation under section 4(b)(2) of the Act. Please see the section of this rule entitled ''Exclusions from Critical Habitat'' for a more detailed discussion of the exclusions.

(51) *Comment:* Several commenters asked if their comments mattered or if decisions about the critical habitat designation had already been made.

Our Response: Public comments are an opportunity for the Service to obtain additional information about the species and areas involved in the critical habitat designation, as well as about the questions and concerns of landowners and other stakeholders. We do our best to incorporate all relevant information we receive and to address individual concerns and questions. The final designation of critical habitat reflects both the requirements of the law and the input from stakeholders insofar as it is possible to incorporate this input without compromising the biological basis for the designation.

(52) *Comment:* The proposed rule in the **Federal Register** is too technical and difficult to understand and should be translated to the Chamorro language.

Our Response: The Service strives to make its public documents as simple as possible without compromising their scientific integrity and legal sufficiency. In all of our documents, we strive to use plain language in government writing. Although we did not make the rule available in other languages, we did produce extensive outreach materials to facilitate the public's understanding of the proposed designation. For example, we produced an illustrated fact sheet about the proposed rule entitled ''Critical Habitat for Six Species of Mariana Island Birds and Bats,'' which was available at the public meetings and hearings and was mailed with the proposed rule to a total of 127 interested parties. Please refer to the ''Previous Federal Action'' section of this rule for a description of the Service other outreach efforts for this designation. We continue to work with the public to provide information and promote a better understanding about critical habitat. We will continue ongoing discussions to help the local communities better understand the critical habitat designations as well as to learn more about the Mariana Crow, Mariana fruit bat, and Guam Micronesian kingfisher.

(53) *Comment:* How will critical habitat affect harvesting of plants for cultural uses?

Our Response: Critical habitat will have no effect on such collecting if it takes place on non-Federal lands and involves no Federal money or authorization.

(54) *Comment:* The ''essential habitat'' for the Mariana crow outlined on Rota in the draft revised recovery plan provides a good basis for collaboration with the Rota community to conserve this habitat and improve its quality for crows. Such a cooperative, voluntary approach is liable to meet with greater conservation success than the imposition of critical habitat.

Our Response: We hope that these conservation activities will take place regardless of this critical habitat, which is only one of many potential tools for addressing long-term conservation of the crow on Rota. The Service recognizes that to improve the current condition of Mariana crow on Rota, it is insufficient to simply regulate harmful activities. Rather, it is necessary to carry out active management measures to confer a benefit on the species of concern, such as habitat manipulation, exotic species control, or simply allowing access for the purposes of reintroduction (Bean 2002).

(55) *Comment:* If military lands on Guam are excluded from critical habitat, the Government of Guam lands and private lands designated as critical habitat may become commensurately more important.

Our Response: The Air Force and Navy lands identified as essential habitat but excluded under sections 4(a)(3) and/or 4(b)(2) of the Act, while not designated critical habitat, would remain part of the total acreage of habitat essential to the conservation of these species on Guam.

(56) *Comment:* Several commenters stated that the Government of Guam's proposed alternative to critical habitat designation does not provide an adequate management plan for its conservation lands and is not an acceptable alternative to critical habitat designation on Government of Guam lands.

Our Response: We agree that the Government of Guam's proposed alternative to critical habitat designation is not comparable to an INRMP developed for military lands. However, we believe that as a sign of the desire of the Government of Guam to increase cooperation with the Service on the conservation and recovery of the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher, particularly when considered against past relations, it is a significant positive step. We also believe that implementation of this plan will benefit these species. Therefore, we have excluded Government of Guam lands from critical habitat designation. *See* ''Analysis of Impacts Under Section 4(b)(2)'' for additional information.

(57) *Comment:* Several commenters stated that very few of the projects in the Government of Guam's proposed alternative to critical habitat designation are new. Therefore, this proposal offers little additional benefit to the species. In addition, these commenters also stated that there is no guarantee that the projects outlined in the proposal will be implemented because Guam lacks the funding and staff to implement many of the actions.

Our Response: We agree that some of the projects outlined in the Government of Guam's proposed alternative to critical habitat are ongoing projects. However, we disagree that the Government of Guam's proposed alternative to critical habitat provides little additional benefit to the species. Therefore, we have excluded Government of Guam lands from critical habitat designation. *See* ''Analysis of Impacts Under Section 4(b)(2)'' for additional information.

(58) *Comment:* Two commenters stated that ungulate eradication is a high priority for Guam's conservation lands but is not addressed in their proposed

alternative to critical habitat designation.

Our Response: We agree that ungulate eradication is not specifically addressed in the Government of Guam's proposed alternative. However, their alternative does include ungulate control-related activities such as developing comprehensive management plans for Philippine sambar deer and feral pigs that could include eradication of ungulates on Government of Guam conservation lands.

(59) *Comment:* One commenter stated that Guam's proposal does not discuss how long Guam's conservation lands will be protected and how Guam will prevent and prosecute illegal encroachment on their conservation lands.

Our Response: We agree that the Government of Guam's proposed alternative to critical habitat designation does not specifically address the duration in which their conservation lands will be protected for endangered species conservation or how protection will be enforced. However, we still believe that that the benefits of excluding Government of Guam lands from critical habitat designation outweigh the benefits of inclusion. Therefore, Government of Guam lands were excluded under section 4(b)(2) of the Act. See ''Analysis of Impacts Under Section 4(b)(2)'' for additional information.

Issue 3: Other Relevant Issues

(60) *Comment:* Two reviewers observed that although the rule published by the Service proposing critical habitat on Guam and Rota contained clear and meticulous explanations of what critical habitat is, how it works, and how little threat it poses to landowners, this rule nevertheless has resulted in misunderstandings and significant resentment and frustration in the local communities. These reviewers suggest that the Service should engage in more public outreach efforts and present additional and more summarized and simplified materials explaining the designation to gain the understanding and support of the local people on Guam and in the CNMI.

Our Response: Significant outreach efforts were made regarding this critical habitat rule (*see* our response to Comment 33) in an effort to resolve misconceptions and allay public concerns. We produced an information sheet summarizing the proposed rule that was mailed to all interested parties and that was available at the public meetings and hearings. At public meetings, we were available to answer questions and engage in discussion that is prohibited at hearings.

(61) *Comment:* One reviewer stated that if the proposed critical habitat delineation already reflects concessions by the Service to political or socioeconomic considerations, this should have been clearly articulated in the proposed rule.

Our Response: The proposed critical habitat was delineated based on biological and other conservation-related criteria, without considering potential economic or political impacts of a critical habitat designation. As required by the Act, economic and other relevant impacts have been considered in this final designation. The ''Critical Habitat Designations'' section of this rule describes in detail how we defined the primary constituent elements for each of the three species, how we identified areas that are essential to the conservation of these species, and how we applied criteria used to exclude some of the proposed lands from the proposed critical habitat.

(62) *Comment:* Several commenters, including the Governor of the CNMI, the Rota delegation to the CNMI Legislature, and the CNMI Senate, wrote that the CNMI government has policies and legislation in place that demonstrate a commitment to the conservation of Rota's natural environment and render critical habitat unnecessary.

Our Response: We lack substantial documentation of conservation activities or commitments to conservation activities on Rota that address the long-term conservation of the Mariana crow.

(63) *Comment:* Two commenters, including the acting Commissioner of the Marianas Public Lands Authority, wrote that lands on Rota described as ''public'' in the proposed rule actually belong collectively to people of Mariana descent and are managed for these people by the Mariana Public Lands Authority.

Our Response: In a meeting with the Service in Honolulu on January 14, 2003, representatives of the Mariana Public Lands Authority clarified the status of the lands they manage on behalf of the people of the Mariana Islands and discussed other concerns and questions they had about this critical habitat designation.

The references to ''public lands'' in sections 1.2.6, 4.1.2.3, 6.2.2, 6.2.2.1, and 6.3.2.3 and Figure 6–2 of the DEA are to those lands identified in Article XI, Section 1, of the Commonwealth Constitution as ''public lands belonging collectively to the people of the Commonwealth who are of Northern Marianas descent.'' When referring to Rota, the term ''public lands'' is intended to be used in the DEA as it is used in the Commonwealth Constitution.

We acknowledge the slightly inaccurate description of the term in section 1.2.6 of the DEA, which refers to ''public lands owned by CNMI.'' This phrase was intended to identify ''public lands'' as described in the paragraph above. The identification of the CNMI government as ''owner'' of public lands on Rota is intended to describe the role of the Marianas Public Lands Authority as a government entity representing the people of the Commonwealth who are of Northern Marianas descent. The clarification of the term ''public lands'' does not alter the conclusions on economic impact, as presented in sections 6.2.2 and 6.3.2 of the DEA.

(64) *Comment:* Will critical habitat delay the airport expansion project on Rota?

Our Response: No, a small area proposed as critical habitat that overlapped the action areas for the proposed airport expansion has not been included in this final designation because we have determined that it is not essential to the long-term conservation of the Mariana crow. At the time of this writing, the Service is involved in section 7 consultation with the Federal Aviation Administration on the airport expansion. Independent of critical habitat, both Federal agencies agreed that the project may affect the Mariana crow, and thus entered into consultation to ensure the airport expansion project is in compliance with the Act.

Issue 4: Economic Issues

(65) *Comment:* One reviewer stated that the DEA does not consider the full range of activities that could be affected by critical habitat.

Our Response: A comprehensive and systematic approach was used to identify the activities likely to occur within the 10-year assessment period. Data collection methodology is presented in Chapter 5 of the DEA. For Guam, we identified potentially affected landowners and land managers with information from the Government of Guam's Division of Land Management and Department of Revenue and Taxation; we notified these owners and managers, in writing, of the proposed critical habitat designations and our desire to meet with them to obtain information for use in the DEA; and we conducted either telephone interviews or in-person meetings with potentially affected landowners and managers to identify reasonably foreseeable activities within the 10-year assessment period.

For Rota, meetings were requested and conducted with representatives from CNMI and Rota government offices because most of the island of Rota is comprised of publicly owned lands. Additional activities on Guam and Rota were identified by reviewing the documents listed in the references in the DEA addendum, conducting additional inquiries with local and Federal government agencies, and reviewing information received during the public comment period.

(66) *Comment:* One reviewer asked why the cost of section 7 is estimated to be so high for the Rota Airport extension when the proposed project area lies outside of the critical habitat boundary.

Our Response: Section 6.2.2.1.1 of the DEA and section 3.3 of the DEA addendum describe costs associated with the proposed extension of the Rota Airport. The estimated costs in the DEA were based on government costs associated with conducting section 7 consultations; a biological survey, presumed because of the belief that neighboring areas contained primary and secondary breeding habitats for the Mariana crow; and annual biological monitoring. These costs were estimated to total $111,650 over a 10-year period.

Since the DEA was published, the Service was informed by the consultants preparing the National Environmental Policy Act (NEPA) environmental assessment (EA) that the western runway protection zones would indeed fall within proposed critical habitat and that the affected area (approximately 300 by 500 ft (91 by 152 m)) may need to be cleared to extend the grassed and fenced airport area. A larger area extending further west may be modified in such a way that the height of the forest does not exceed the elevation of the runway (585 ft (178 m) above sea level).

As described in section 3.3 of the DEA addendum, the consultants preparing the EA informed us that the document will provide more information for use in the section 7 consultation process. Without the benefit of details in an EA, the Service anticipates that a formal section 7 consultation with the Federal Aviation Administration may be necessary, suggesting section 7 costs in the medium range (from Table 6–1 in the DEA) with no annual biological monitoring. The cost of a biological survey considered in the DEA ($7,800) remains as a cost of the section 7 consultation. The revised section 7 consultation cost is $33,050 over a 10-year period. This cost is $78,600 less than the $111,650 estimated in the DEA.

(67) *Comment:* One reviewer noted that small economic entities will be largely unaffected by critical habitat.

Our Response: Based on the DEA and its addendum, a substantial number of small entities are not expected to be significantly impacted by the critical habitat designation. As indicated in section 6.4 of the DEA and section 5 of its addendum, entities affected by the intended designation are Urunao Resort Corporation (Guam), a Chamorro family (Guam), Marianas Agupa Inc. (Rota), and individual CNMI residents (Rota). Since the DEA was published, both the Municipality of Rota and Marianas Pro-Plan International were identified as small entities directly affected by critical habitat. These entities represent a very small fraction of the total number of the small entities on Guam and Rota, and they therefore are not considered a substantial number of small entities as suggested in the guidance on implementing the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act guidance.

(68) *Comment:* Several commenters stated their belief that critical habitat will have major impacts on private landowners, such as project redesign, acquisition of easements (and associated paperwork), property devaluation associated with critical habitat, and the need for a typical landowner to hire a consultant to ''overcome the multitude of regulatory hurdles he will encounter'' once critical habitat is designated. One commenter stated that these costs will amount to 10 to 100 times the estimated figure, and another stated that the estimate of $35,000 in the draft economic analysis for impacts of critical habitat to private landowners on Guam is a gross underestimate. Another commenter stated that the designation of critical habitat will prevent landowners from gaining $2 million worth of income annually due to a perception that critical habitat will lead to the condemnation of land. The commenters believe that the Service has not adequately identified or assessed these impacts.

Our Response: As identified in section 6.1 of the DEA addendum, the Service comprehensively and systematically attempted to obtain input from potentially affected landowners and managers, including private landowners. Activities likely to occur within the 10-year assessment period were identified and incorporated in section 6.2.1.4 of the DEA. Sections 3 and 4 of the DEA addendum provide further evaluation of potential impacts to private landowners based on information received during the DEA public comment period. These include impacts on Federal funding, loans, and insurance eligibility; impacts on property value; condemnation of land; and costs to investigate implications of critical habitat on private property.

Potential section 7 consultation costs associated with Federal funding, loans, and insurance are evaluated in section 3.1 of the DEA addendum. In general, Federal funding or loans for new construction require consultation, and because very few Federal mortgage insurances are provided for new construction, consultation is not likely for Federal mortgage insurance.

Property value losses associated with critical habitat, discussed in section 4.2 of the DEA addendum, may be based on facts and an accurate assessment of the implications of critical habitat or on perceptions that the designation will cause significant changes in market value and economic benefits. Based solely on direct compliance costs, a decrease in private property value due to critical habitat designation is expected to be small. The reason for this is that few projects and activities in these areas would be subject to consultations, and project modifications are not expected to be burdensome. Additional effects on property values (*e.g.,* stigma effects) are described in Section 4.2.1 of the DEA addendum.

Section 4.3 of the DEA addendum states that critical habitat designation does not result in the condemnation of land or any other form of land acquisition by the Service. On occasion, the Service does purchase land, *e.g.*, for a wildlife refuge, but this would be a separate action from critical habitat designation. As such, any land purchase should be evaluated at the time it is proposed and should be based on what is actually proposed. When the Service does purchase private property, *e.g.*, to establish a National Wildlife Refuge, the normal practice is to do so only when (1) the landowner is willing to sell the land, and (2) the price and other terms are acceptable to the landowner. Finally, the Service currently has no plan to purchase land on Guam.

Regarding costs associated with investigating the implication of critical habitat on private property, landowners that can afford professional services may feel it necessary to retain counsel, land surveyors, biologists, and other experts to determine the implications of the designation on their property. Costs associated with these investigations are discussed in detail in section 4.4 of the DEA addendum. The total cost ranges from roughly $216,630 to $738,700 on Guam and $75,690 to $258,100 on Rota for all landowners whose property falls

within proposed critical habitat boundaries.

(69) *Comment:* The previous Governor of Guam stated that the analysis of economic impacts to private landowners must be based not on current conditions (limited access) but on the assumption that the unfettered access ordered by the Federal court were actually granted, which would increase the value of the property.

Our Response: Sections 6.2.1.4.1 and 6.2.1.4.2 of the DEA provide more detailed descriptions of existing conditions. Access to Uranao and Jinapsan properties along the northern coastlines of Guam requires travel through Andersen Air Force Base. Current travel restrictions on the base are solely a function of national security concerns implemented by the base. For this reason, we believe it appropriate to assume that unfettered access represents the current or baseline condition. It is possible that different current or baseline conditions could change the potential economic impacts from this designation. However, we selected what we believe to be the most accurate description of baseline conditions.

(70) *Comment:* Several commenters, including the Governor of the CNMI, the CNMI Senate, the Rota Delegation to the CNMI Legislature, and the acting Commissioner of the Mariana Public Lands Authority, observed that the section 7 consultation burden generated by critical habitat will impede projects on private lands that involve Federal permits for infrastructure development, Federal Highway Administration funds for primary village roads, Department of Veterans Affairs (VA) mortgage loans, or Federal mortgage insurance. These agencies will not pay to send survey teams to the Mariana Islands to conduct the necessary studies (to formulate biological assessments, *etc.*).

Our Response: Sections 6.2.1.4 and 6.2.2.2 of the DEA describe projects on private lands on Guam and Rota for which the potential impacts of proposed critical habitat were originally evaluated. The impact of the potential section 7 nexus of Federal funding for private construction on lands proposed for designation has been evaluated with additional information in section 3 of the DEA addendum. Potential impacts vary between agencies and are discussed individually below.

The Federal Highway Administration annually gives Guam $13 million and CNMI $3 million (of which approximately $400,000 is allocated to Rota). Designation of critical habitat would not impede the funding but may have an impact on which projects the local government chooses to fund. The costs of section 7 consultation and any other required environmental compliance would be withdrawn from the same grant.

Economic impacts of critical habitat associated with Federal Highway Administration funding are unlikely to be significant on Guam. As discussed in section 3.1.1 of the DEA addendum and based on the Guam 2010 Highway Master Plan (Wilbur Smith Associates 1992), new roadway projects and road improvements are more likely to be in demand in heavily traveled areas outside of proposed critical habitat. The cost of consultations estimated in section 3.1.1 of the DEA addendum would represent a relatively minor cost, approximately 0.1 percent, relative to the Federal Highway Administration $13 million grant provided to Guam. Based on interviews with Rota government representatives, projects planned for the next 10 years were identified, including one roadway project. Consultation costs associated with Federal Highway Administration funding on Rota, estimated in section 6.2.2.1.2 of the DEA, represent two percent of the $400,000 grant allocated to Rota.

The recent history of VA mortgage guarantees and home loans differs between Guam and Rota. On Guam, the VA provides mostly mortgage guarantees for existing structures, not new construction. For this reason, and because most lenders do not use the VA for new construction loans, VA mortgage guarantees on Guam are not likely to be affected by critical habitat as it was proposed. On Rota, home loans have been provided for new construction projects. Based on the VA home loans provided since 1994, it is reasonable to project that one to two VA home loans could occur in isolated areas in critical habitat in the next 10-year period. Direct impacts and costs associated with section 7 consultations were estimated in section 3.1.2 of the DEA addendum.

Section 3.1.3 of the DEA addendum addresses U.S. Department of Housing and Urban Development (HUD)/Federal Housing Administration programs that exist on Guam and Rota. These include HUD grants (Community Development Block Grants), HOME Investment Partnership Program, Emergency Shelter, and other competitive grants under Homeless Assistance) and Federal Housing Administration mortgage insurance. Based on the findings in section 3.1.3 of the DEA addendum, HUD grant projects are unlikely to occur in undeveloped areas that are likely to be subject to requirements associated with critical habitat. Another program under HUD, the Federal Housing Administration mortgage insurance program, assists individuals with obtaining a loan. It has been used about twice in 2002 on Guam, used very little in the last 10 years on Guam, and had not been used at all in the last 10 years on Rota. Because HUD-supported projects are unlikely to occur in undeveloped areas and are infrequently used, together with the fact that HUD endorsements for single-family home mortgage insurance are listed in their environmental procedures as categorical exclusions that are not subject to the related Federal environmental laws and authorities, it is unlikely that section 7 consultation would occur.

(71) *Comment:* One commenter stated that critical habitat designation will prevent the development of real estate on CLTC lands because lending institutions will not take risks on loans for development of lands encumbered by special environmental/conservation status. This status creates too much risk of lawsuits. This commenter stated that they would choose not to be involved in projects within designated critical habitat.

Our Response: The economic costs associated with the loss of planned development on CLTC lands in critical habitat is addressed in section 4.1 of the DEA addendum. Primary lending institutions, including the HUD Direct Home Loan program, are likely to request that the prospective buyer consider other properties as it is in their interest, or it is their requirement (as in the case of HUD's programs), to avoid properties with site encumbrances. Lenders will generally look to unencumbered property for development (Hirokoshi in litt. 2003). If there is no option, it is likely that additional requirements would be needed to mitigate the risks of project development (Kuiokoa, in litt. 2003). Depending upon the situation, lenders may loan less money for projects with environmental encumbrances than for those without such encumbrances (Hirokoshi, in litt. 2003).

One lender indicated that the biggest concern for lenders is that critical habitat will decrease marketability and value of the property. In the absence of documented effect based on critical habitat, this concern is based on experience with properties associated with wetlands. Another concern identified was that environmental regulations may change due to evolving scientific information. Potential property value losses for land in critical habitat are discussed in section 4.2.2 of the DEA addendum.

While it is prudent for lenders to avoid risks on loans for development of lands encumbered by special environmental/conservation status, it is more likely that real estate development on CLTC lands will be impeded by CLTC lease requirements, which limit lessees to people of Chamorro descent. Because of this limitation, CLTC practices do not abide by the Fair Housing Law, which prohibits discrimination in housing because of race or color, national origin, religion, sex, familial status, or handicap. Lack of implementation of the Fair Housing Law prevents use of government-sponsored enterprises, such as the Government National Mortgage Association (Ginnie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Federal Housing Administration mortgage insurance and VA loans are available only to lenders and borrowers whose projects abide by the Fair Housing Law, although attempts to obtain exceptions for native Chamorros may be underway. Such an exception could occur as exceptions have been made under the VA loan program for native Americans.

If Chamorros were to be exempted from the requirements of the Fair Housing Law, designation of critical habitat would represent an additional encumbrance that will need to be evaluated by prospective lenders. Because many of the lenders would look to secondary mortgage markets, approximately half of which are government-sponsored enterprises, lenders are required to consider requirements of these government-sponsored enterprises. However, as discussed in sections 3.2 and 4.1 of the DEA addendum, it is unlikely that critical habitat designation would result in additional costs or processing solely from attempts to obtain government-sponsored enterprises mortgages, Federal Housing Administration mortgage insurance, or VA loans.

(72) *Comment:* Several commenters stated their belief that the designation of critical habitat will severely impede economic development, improvement of basic infrastructure, and the provision of basic needs to the people of Guam and Rota.

Our Response: As discussed in sections 3.1 and 6.6 of the DEA addendum, Federal agencies, such as Federal Highway Administration and HUD, were contacted to obtain information about their past practices and requirements with respect to environmental regulations. In general, the local agencies responsible for allocating Federal funds to local projects consider environmental issues prior to approving projects for funding. Most Federally funded projects have occurred in developed areas to meet community needs, as is the case with HUD Community Development Block Grants funds. Development projects occurring within the 10-year assessment period are described in Chapter 6 of the DEA and include: (1) Reuse of the former Federal Aviation Administration Housing parcel on Guam, (2) improvements at the Rota International Airport, (3) roadway improvements to Route 100 on Rota, (4) roadway improvements to Routes 5 and 12 on Guam, (5) development of the Marianas Agupa Golf Course, (6) development of a solid waste disposal landfill on Rota, and (7) implementation of the Homesteads program on Rota. Of the projects with a possible Federal nexus, all are expected to proceed even with critical habitat designation.

(73) *Comment:* Two commenters stated that the economic analysis makes an incorrect assumption that the CNMI government and/or the municipality of Rota are not ''small entities.''

Our Response: As discussed in section 5 of the DEA addendum, we have determined that the CNMI government is not a small entity under the Regulatory Flexibility Act (Title 5, U.S. Code sections 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, because it governs a population of greater than 50,000 people. The Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act defines ''small government jurisdictions'' as the government of a city, county, town, school district, or special district with a population less than 50,000. However, based on population, the Municipality of Rota can be considered a small entity.

Using the U.S. Environmental Protection Agency guidance, ''1999 Revised Regulatory Flexibility Act/ Small Business Regulatory Enforcement Fairness Act Guidance for Environmental Protection Agency Rulewriters,'' the recommended quantitative method for evaluating the economic impact of a rule on small government entities is to evaluate the annualized compliance costs as a percentage of annual government revenue. The estimated annual cost of proposed critical habitat designation to the Municipality of Rota, based on the 10-year estimate of section 7 consultation and project modification costs, is $13,860. The annual municipal operating budget for Rota is estimated at $13.5 million. Using the Environmental Protection Agency methodology described above, the costs associated with section 7 consultation and project modification would comprise 0.1 percent of Rota's annual municipal operating budget. A more detailed discussion of costs is provided in section 5 of the DEA addendum.

(74) *Comment:* One commenter recommended the addition of a synopsis at the beginning of the economic analysis.

Our Response: The commenter's suggestion that the Executive Summary of the DEA should include a brief synopsis of the evaluation addressing the efficacy and cost/benefit ratio of the proposed designation is appropriate for improving the readability and ease of understanding of the DEA. However, presentation of an accurate cost/benefit ratio is not possible because some of the costs and many of the benefits are not quantified. This reflects the uncertainty about the outcome of the designation of critical habitat and the fact that many of the benefits of critical habitat are best expressed in biological terms, for which an economic value has not been determined.

(75) *Comment:* One commenter observed that the economic analysis addresses only the impacts of section 7 consultation, only weakly characterizes the economy of Rota, and fails to consider the ''backlash effect'' of critical habitat designation on Rota and other indirect effects. This commenter asked that the comment period be reopened subsequent to a revision of the economic analysis.

Our Response: As stated in the Executive Summary, the DEA addresses only section 7-related economic impacts and that costs related to other sections of the Act are outside the scope of the analysis. Because the Act requires the Service to consider the ''benefits of inclusion *vs.* the benefits of exclusion'' of critical habitat within any particular parcel, it is appropriate to address section 7 impacts. Additional indirect impacts associated with the designation of critical habitat are addressed in section 6 of the DEA and in section 4 of the DEA addendum.

Information used to characterize the economy of Rota was obtained through a comprehensive literature search. Unfortunately, very little information specific to Rota was available. Since the publication of the DEA, additional information has been identified and incorporated into the sections of the DEA addendum relating to Rota. Such data include: the annual operating budget of Rota; visitor counts; numbers of families below the poverty level; and breakdown of personal income by age.

Further consideration of this additional economic data does not

substantially alter the findings in the DEA. In the case of reevaluating the regulatory flexibility analysis, considering Rota as a small entity, the analysis demonstrated that the proposed designation of critical habitat will not have a significant economic impact on Rota. As described in section 5 of the DEA addendum, the potential costs associated with the designation of critical habitat are estimated to be only 0.1 percent of Rota's annual municipal operating budget.

Indirect cost impacts associated with a potential ''backlash effect'' of critical habitat designations on Guam and Rota are presented in Sections 6.3.1.4 and 6.3.2.2 of the DEA. Section 6.3.1.4 introduces the basis for the strong negative sentiments associated with Federal restrictions on land on Guam. Economic impacts associated with this ''backlash effect'' may include those associated with drawn out negotiations and delays in Federal project schedules. As described in the DEA, the cost of negotiations and delays to the Federal government could be significant. The potential for residents of Rota to react negatively toward the Mariana crow is addressed in section 6.3.2.2 of the DEA. In the DEA, it is acknowledged that ''should the scenario of impacts on the Mariana crow due to critical habitat rule-making be realized, the effects and costs would be great, essentially causing the intentions of critical habitat to back-fire.'' Further discussion of ''backlash'' effects is constrained by the inability to anticipate or quantify what potential actions may occur.

(76) *Comment:* One commenter suggested that the economic analysis discussion of Rota's population should separate U.S. passport holders from alien guest workers.

Our Response: Data from the 2000 U.S. Census, a 1997 U.S. Department of Commerce Economic Census of Outlying Areas, and a 2001 Bank of Hawaii Commonwealth of the Northern Mariana Islands Economic Report were reviewed to determine the social and economic makeup of Rota. Although census data identified 1,017 non-citizen residents out of the population of 3,283 people, the available data do not characterize the employed workforce of 1,591 people by citizenship.

(77) *Comment:* One commenter advised that the economic analysis should more clearly characterize the economy of Rota and carefully distinguish between statistics for Rota and statistics for the CNMI as a whole.

Our Response: We agree that the economic character of Rota is different from that of CNMI as a whole and that the CNMI Gross Island Product is not a relevant figure to use in describing Rota's economy. However, as the commenter acknowledged, tourist arrival and hotel occupancy data for Rota are limited. The accuracy of available tourism data is suspect based on the lack of distinction of airport arrivals between tourists and business travelers arriving at the airport and the non-participation of Rota's hotels in Hotel Association of the Northern Mariana Islands, the organization which provided occupancy rates for CNMI hotels. Information from the *2000 CNMI Statistical Yearbook* states that there were 9,826 visitors to Rota in 2000, down from 12,437 in 1999. The data in the economic analysis for government and private sector employment are from the *2000 U.S. Census.* According to the census data, when employment by government is compared to employment in the private sector as a whole, there is greater private sector employment (62.9 percent vs. 35.7 percent in government). However, when employment figures are evaluated by industry (*e.g.*, public administration, manufacturing, construction, wholesale, retail, service, *etc.*), public administration is the leading industry.

In addition to attempting to obtain information specific to Rota, the potential economic impact to small entities, including the Municipality of Rota, is reevaluated in section 5 of the DEA addendum. This analysis concluded that the economic impact of proposed critical habitat to Rota would be 0.1 percent of the annual municipal budget.

(78) *Comment:* One commenter stated that text in the economic analysis regarding Coastal Resource Management Office requirements and the potential for this agency to change their regulations as a result of the critical habitat designation is not valid and should be deleted.

Our Response: As discussed in section 4.5 of the DEA addendum, while the Coastal Resource Management Office did not provide specific comments on this DEA addendum, it is believed that the designation of critical habitat would not become an Area of Particular Concern, based on public comment and further review of the relevant regulation (Coastal Resource Management Regulations, as amended 1990). For this reason, the designation of critical habitat would not increase the number of Minor Permit actions under the Coastal Resource Management Office's jurisdiction.

(79) *Comment:* One commenter stated that if the critical habitat designation forces the Air Force to relocate its mission, the impact to Guam's economy would be huge.

Our Response: Estimated costs to relocate Air Force mission requirements were provided by the Air Force in a letter during the DEA public comment period (Defoliart, *in litt.,* 2003). These costs are estimated to be $2.6 billion and exclude the additional costs for ''bedding down'' new missions at the receiving installation. As demonstrated by the information provided by the commenter, relocation of mission requirements would be costly, would impact the mission of the Air Force and national security, and would impact Guam's economy. However, based on the information received to date, there is no reason to believe that proposed critical habitat would cause the Air Force to relocate or cause its mission to be impeded. Section 6.3.1.3 of the DEA identifies potential impacts of critical habitat designation (as proposed) on Air Force activities, however, Air Force lands have been excluded from this final critical habitat designation (*see* ''Analysis of Air Force Lands Under Section 4(a)(3)'' for more details).

(80) *Comment:* One commenter observed that the economic analysis does not consider or quantify the benefits of critical habitat and that the technology and expertise for quantifying these benefits and conducting this analysis exist.

Our Response: As mentioned in section 6.5.2 of the DEA, the development of quantitative estimates associated with the benefits of critical habitat is impeded by the lack of available studies and information relating to the size and value of beneficial changes that are likely to occur as a result of listing a species or designating critical habitat. However, several categories of benefits were identified and discussed in the DEA, including use value, existence value, recreation benefits, overall ecosystem health, ecosystem preservation values, and other benefits.

The commenter suggested that a 1999 analysis by University of Hawaii economists on the total value of environmental service provided by Oahu's Koolau Mountains be used as a model for estimating the value of the environmental benefits provided by critical habitat (Kaiser *et al.* 1999). This document was, in fact, used in the DEA as a resource for concepts and for identifying original research on certain subjects, but it has limited applicability for valuing the benefits of the critical habitat designation for several reasons. First, the University of Hawaii study had a different purpose, which was to estimate the total value of

environmental benefits provided by the entire Koolau Mountains on the island of Oahu. Many of the assumptions and much of the analysis in the University of Hawaii study are not transferable to the economic analysis for the critical habitat on Guam and Rota. For example, the Koolau Mountains were evaluated as a contiguous area, whereas the intended critical habitat designation is composed of several separate areas on two islands. The value of water recharge in the University of Hawaii study reflected projected water supply and demand conditions on Oahu, an island which is almost three times the size of Guam and 18 times the size of Rota, with a population almost six times that of the Guam and 47 times that of Rota. Also, the University of Hawaii benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the man-made Ala Wai Canal. Because this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin and must be dredged periodically. Similar conditions are not present on either Guam or Rota.

(81) *Comment:* One commenter stated a belief that it is inappropriate to include existence and recreational values in the calculation of the economic impacts of the critical habitat designation on Rota because these values are imported from the U.S. mainland and have no relevance on Rota where the Mariana crow is considered to be a pest and has ''no commercial or cultural significance.''

Our Response: As stated in section 6.5.2 of the DEA, existence values for endangered species are often calculated with willingness-to-pay studies. These studies estimate the public's willingness to pay to preserve a species or enhance a species' population above and beyond any expected direct use. As such, people who do not live on Guam or Rota and who have never seen the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow may still value the existence of these species. The DEA identified several existing willingness-to-pay studies that are closely applicable to the values associated with protecting the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow. However, these study cases are not sufficiently comparable to the policy cases to consider benefits transfer. Therefore, neither the DEA nor the DEA addendum provide quantitative estimates of the existence values of the species.

Recreation benefits are mentioned in the DEA because protecting critical habitat may result in preservation of habitat suitable for other recreational uses, such as hiking, camping, and bird-watching. Although some people may consider the Mariana crow to be a pest, there may be recreational benefits associated with the protection of the habitat for the Mariana crow. However, as stated in the DEA, because data on the resultant increase in number or quality of trips are unavailable, such estimated recreational benefits cannot be quantified.

(82) *Comment:* One commenter stated that the cost analysis in the DEA of the designation on military lands is based on the assumption that if critical habitat is designated, the Department of Defense would pull out of the cooperative agreement that created the overlay National Wildlife Refuge and will cease to conduct conservation projects on their lands.

Our Response: As provided by the terms of the Cooperative Agreement, the Navy and Air Force have retained the option of unilaterally withdrawing any or all of their lands from the Guam National Wildlife Refuge in the event that any of these lands on Guam are designated critical habitat. The possibility of the Navy pulling out of the cooperative agreement was presented under the indirect effects section of the DEA based on input we received from Navy representatives at that time. The Air Force did not identify any potential indirect costs that would result from critical habitat designation, or state any intention to withdraw from the overlay refuge if critical habitat were designated on their lands. The indirect effects of the Navy's potential withdrawal from the refuge were discussed, but not quantified, as stated in section 6.3.1.1 of the report. Therefore, the cost analysis of designation on Navy and Air Force lands was based on quantifiable impacts on specific military activities, not, as the commenter suggests, on the broad assumption that the military would pull out of the refuge overlay agreement and cease to conduct conservation projects. Furthermore, it is not clear how or whether the potential withdrawal of the military from the overlay refuge would affect the economic impact of critical habitat designation. Finally, Air Force and Navy lands were excluded from critical habitat designation pursuant to sections 4(a)(3) and/or 4(b)(2) of the Act (see the ''Exclusions from Critical Habitat'' section).

(83) *Comment:* One commenter stated that the cost analysis of the designation on military lands is based on unsubstantiated claims that critical habitat will impair military training and readiness. A recent General Accounting Office (GAO) report has found that this is not likely the case.

Our Response: The referenced GAO report (GAO–02–614), which surveyed military bases within the continental United States, states that readiness data are insufficient to characterize the extent to which encroachment (including endangered species habitat on military installations) has affected training readiness. However, this report and an April 2002 GAO report, ''Military Training: Limitations Exist Overseas but Are Not Reflected in Readiness Reporting'' (GAO–02–525), both acknowledge that although readiness data do not comprehensively document the extent of training range capabilities or costs associated with encroachment, military officials report that they have lost training range capabilities because of encroachment. As stated in GAO–02–525, ''For the most part, military officials * * * and office of the secretary of defense officials told us that the unit readiness reporting is subjective and is not a vehicle to report training shortfalls and the associated limitations or restrictions.''

In the absence of sufficient quantitative data to support or refute the military officials' claims that critical habitat would impair training and readiness, the DEA relied upon military base representatives for input. During the public review period, additional military input supported the importance of the bases for national security and described the cost implications of forcing missions to relocate. The Air Force's Headquarters, Pacific Air Force, provided specific examples of the strategic significance of Guam's proximity to areas of potential conflict, *e.g.,* dramatic decreases in time and distance required to fly to Seoul and Taiwan from Guam (compared to Minot Air Force Base in North Dakota), and concluded that Andersen Air Force Base is ''crucial'' to the Air Force's implementation of the new defense strategy. The Navy's Deputy Chief of Naval Operations (Fleet Readiness and Logistics) stated that the Navy is ''extremely concerned that a critical habitat designation may curtail or prevent continued use of those areas for military purposes, void taxpayer investments in infrastructure to support military activities at these locations, and require costly investment elsewhere to accomplish training requirements.'' Based on a review of the GAO–02–614 and information obtained from military representatives, the information regarding military training and readiness in the DEA remains appropriate.

(84) *Comment:* One commenter claimed that the need for development of Rota's infrastructure, and the potential for critical habitat to impede that development, has been overstated. The population of the island is small. Other than a golf course and retirement housing, little land is needed for infrastructure improvements. Because of the need for local permits and Federal permits, infrastructure development projects take time to implement, with or without a critical habitat designation. Furthermore, critical habitat is sufficiently flexible to allow development to take place.

Our Response: A comprehensive and systematic approach was used to identify development activities likely to occur over the 10-year assessment period. The data collection methods are presented in Chapter 5 of the DEA. In addition, further analysis of potential private development activities within critical habitat was conducted to determine private land development activities that may have a Federal nexus because of a variety of Federal funding sources. The results of this analysis are provided in section 3 of the DEA addendum. Planned development projects that could be affected by proposed critical habitat on Rota within the 10-year assessment period, as identified in the DEA and DEA addendum, include: improvements at the Rota International Airport, roadway improvements to Route 100 on Rota, roadway improvements to Routes 5 and 12 on Guam, development of the Marianas Agupa Golf Course, development of a solid waste disposal landfill, development of an affordable housing project on CLTC lands, two new construction projects using VA home loans, and two new construction projects using U.S. Department of Agriculture Rural Development loans. We agree that development may still take place on both public and private lands within critical habitat, with the potential associated section 7 costs identified in the DEA and DEA addendum.

(85) *Comment:* One commenter stated that critical habitat will result in the loss of funds and other resources that presently are used for conservation because these resources will be needed to complete section 7 consultations triggered by actions proposed within critical habitat.

Our Response: The cooperative agreements between the Service and the military require that the military conduct consultation under Section 7 of the Act in areas identified as essential to the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher, even if these species are extirpated from the affected area (but are not extinct). Therefore, the costs associated with consultation on critical habitat would be difficult to separate from those already borne by the military pursuant to the terms of their cooperative agreement with the Service.

Summary of Changes From the Proposed Rule

Based partly on a review of public comments received on the proposed determinations of critical habitat and partly on additional biological examination of several areas, we have reevaluated our proposed designations. We made revisions to the unit boundaries based on information that indicated that the primary constituent elements were not present in certain portions of the proposed units, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. We also revised the unit boundaries based on mapping errors that were made in the proposed rule. In addition, Andersen Air Force Base lands were excluded under Section 318 of the fiscal year 2004 National Defense Authorization Act. Navy lands, Government of Guam lands, and private lands on Guam were excluded under section 4(b)(2) of the Act, as amended by Section 318.

A brief summary of the modifications made to each unit for each species is given below.

Mariana Fruit Bat

Unit A: Northern Guam

A total of 14,041 ac (5,681 ha) was removed or excluded from critical habitat designation in this unit. On COMNAVMARIANAS Communications Annex, we removed 169 ac (68 ha) from along the boundary of this unit that are mowed areas and do not contain the primary constituent elements required by the Mariana fruit bat. We also removed 95 ac (38 ha) along the eastern coast of Guam because these areas were cleared for housing and do not contain the primary constituent elements required by the Mariana fruit bat. Along the northern coast, we removed 100 ac (40 ha) of beach belonging to Andersen Air Force Base, because this area does not contain the primary constituent elements required by the Mariana fruit bat. Along the northern and western boundary of the unit, we removed 237 ac (96 ha) of private land that contain some or all of the primary constituent elements, but we believe these areas are not essential to the conservation of the Mariana fruit bat. We also modified the boundary around the Guam National Wildlife Refuge to include 83 ac (33 ha) of Service-owned land that had not been included in the proposed rule due to a mapping error.

Finally, Air Force, Navy, and Government of Guam lands were excluded from critical habitat designation in this unit under sections 4(a)(3) and/or 4(b)(2) of the Act, as amended, for the reasons described earlier in the sections entitled ''Exclusions from Critical Habitat.'' Exclusion of Air Force lands resulted in the subtraction of 10,838 ac (4,386 ha) from designated critical habitat in northern Guam. Exclusion of Navy lands resulted in a subtraction of 962 ac (389 ha) from designated critical habitat in northern Guam. Exclusion of Government of Guam lands resulted in a subtraction of 1,640 ac (664 ha) from designated critical habitat in northern Guam.

These modifications resulted in the reduction of critical habitat in the unit from 14,338 ac (5,803 ha) to approximately 376 ac (152 ha). This unit is the only designated unit for the Mariana fruit bat on Guam and has been renamed the ''Mariana Fruit Bat Unit'' (*see* ''Critical Habitat Designation'' and ''Unit B: Southern Guam'' below for additional information).

Unit B: Southern Guam

A total of 10,464 ac (4,234 ha) was removed or excluded from critical habitat designation in this unit. On COMNAVMARIANAS Ordnance Annex, we removed 139 ac (57 ha) along the northern boundary of the unit because it contains buildings and mowed areas and does not contain the primary constituent elements for the Mariana fruit bat. We also removed 18 ac (7 ha) of private land from the eastern boundary of the unit that does contain the primary constituent elements but is not essential to the conservation of the Mariana fruit bat.

In addition, all Navy, Government of Guam, and private lands were excluded from critical habitat designation for the reasons described earlier in the sections entitled ''Exclusions from Critical Habitat.'' Exclusion of Navy lands resulted in the subtraction of 7,015 ac (2,839 ha) from designated critical habitat in southern Guam. Exclusion of Government of Guam lands resulted in the subtraction of 1,349 ac (546 ha) from designated critical habitat in southern Guam. Exclusion of private lands resulted in the subtraction of 1,941 ac

(785 ha) from designated critical habitat in southern Guam.

These modifications resulted in the removal of this unit from critical habitat. Critical habitat for the Mariana fruit bat on Guam is now in one unit in northern Guam called the ''Mariana Fruit Bat Unit'' (*see* ''Critical Habitat Designation'' for additional information).

Mariana Crow

Unit A: Northern Guam

A total of 13,772 ac (5,587 ha) was removed or excluded from critical habitat designation in this unit. On COMNAVMARIANAS Communications Annex, we removed 169 ac (68 ha) from along the boundary of this unit that are mowed areas and do not contain the primary constituent elements required by the Mariana crow. On Andersen Air Force Base we removed 100 ac (40 ha) of beach along the northern coast because this area does not contain the primary constituent elements required by the Mariana crow. Along the western and northern boundaries of the unit, we removed 99 ac (40 ha) of private land that do contain some or all of the primary constituent elements, but are not essential to the conservation of the Mariana crow. We also modified the boundary around the Guam National Wildlife Refuge to include 53 ac (33 ha) that had not been included in the proposed rule due to a mapping error.

Finally, Air Force, Navy, and Government of Guam lands were excluded from critical habitat designation in this unit under sections 4(a)(3) and/or 4(b)(2) of the Act, as amended, for the reasons described earlier in the section entitled ''Exclusions from Critical Habitat.'' Exclusion of Air Force lands resulted in the subtraction of 10,838 ac (4,386 ha) from designated critical habitat in northern Guam. Exclusion of Navy lands resulted in a subtraction of 926 ac (389 ha) from designated critical habitat in northern Guam. Exclusion of Government of Guam lands resulted in a subtraction of 1,419 ac (575 ha) from designated critical habitat in northern Guam.

These modifications resulted in the reduction of critical habitat in the unit from 12,540 ac (5,075 ha) to approximately 376 ac (152 ha). This unit is now the only designated critical habitat for the Mariana crow on Guam (*see* ''Critical Habitat Designation'' and ''Unit B: Southern Guam'' below for additional information).

Unit B: Southern Guam

A total of 10,464 ac (4,234 ha) was removed or excluded from critical habitat designation in this unit. On COMNAVMARIANAS Ordnance Annex, we removed 139 ac (57 ha) along the northern boundary of the unit because it contains buildings and mowed areas and does not contain the primary constituent elements for the Mariana crow. We also removed 18 ac (7 ha) of private land from the eastern boundary of the unit that does contain the primary constituent elements, but we believe this area is not essential to the conservation of the Mariana crow.

Finally, all Navy, Government of Guam, and private lands were excluded from critical habitat designation for the reasons described earlier in the sections entitled ''Exclusions from Critical Habitat.'' Exclusion of Navy lands resulted in the subtraction of 7,015 ac (2,839 ha) from designated critical habitat in southern Guam. Exclusion of Government of Guam lands resulted in the subtraction of 1,349 ac (546 ha) from designated critical habitat in southern Guam. Exclusion of private lands resulted in the subtraction of 1,941 ac (785 ha) from designated critical habitat in southern Guam.

These modifications resulted in the removal of this unit from critical habitat designation. Critical habitat for the Mariana crow on Guam was only designated in northern Guam in Unit A (*see* ''Critical Habitat Designation'' for additional information).

Unit C: Rota

A total of 49 ac (20 ha) was removed for biological reasons from critical habitat designation in this unit. We removed 42 ac (17 ha) of private land from this unit because we found these areas are cleared and do not contain the primary constituent elements required by the Mariana crow. We also removed 7 ac (3 ha) of private land from the boundary of the unit because this area is not essential to the conservation of the Mariana crow. These modifications resulted in the reduction of critical habitat in the unit from 6,084 ac (2,462 ha) to 6,035 ac (2,442 ha). This unit is now divided into two separate subunits and has been renamed ''Unit B'' (*see* ''Critical Habitat Designation'' for additional information).

Guam Micronesian Kingfisher

Unit A: Northern Guam

A total of 14,041 ac (5,681 ha) was removed or excluded from critical habitat designation in this unit. On COMNAVMARIANAS Communications Annex, we removed 169 ac (68 ha) from along the boundary of this unit that are mowed areas and do not contain the primary constituent elements required by the Guam Micronesian kingfisher. We also removed 95 ac (38 ha) of private land along the eastern coast of Guam because these are cleared for housing and do not contain the primary constituent elements required by the Guam Micronesian kingfisher. Along the northern coast, we removed 100 ac (40 ha) of beach belonging to Andersen Air Force Base because this area does not contain the primary constituent elements required by the Guam Micronesian kingfisher. Along the northern and western boundary of the unit, we removed 237 ac (96 ha) of private land that do contain some or all of the primary constituent elements, but are not essential to the conservation of the Guam Micronesian kingfisher. We also modified the boundary around the Guam National Wildlife Refuge to include 83 ac (33 ha) of Service-owned lands that had not been included in the proposed rule due to a mapping error.

Finally, all Air Force, Navy, and Government of Guam lands were excluded from critical habitat designation in this unit under sections 4(a)(3) and/or 4(b)(2) of the Act, as amended, for the reasons described earlier in the sections entitled ''Exclusions from Critical Habitat.'' Exclusion of Air Force lands resulted in the subtraction of 10,838 ac (4,386 ha) from designated critical habitat in northern Guam. Exclusion of Navy lands resulted in a subtraction of 962 ac (389 ha) from designated critical habitat in northern Guam. Exclusion of Government of Guam lands resulted in a subtraction of 1,640 ac (664 ha) from critical habitat in northern Guam.

These modifications resulted in the reduction of critical habitat in the unit from 14,338 ac (5,803 ha) to approximately 376 ac (152 ha). This unit is now called the ''Guam Micronesian Kingfisher Unit'''' and is the only designated critical habitat for the species on Guam (*see* ''Critical Habitat Designation'' and ''Unit B: Southern Guam'' below for additional information).

Unit B: Southern Guam

A total of 10,464 ac (4,234 ha) was removed or excluded from critical habitat designation in this unit. On COMNAVMARIANAS Ordnance Annex we removed 139 ac (57 ha) along the northern boundary of the unit because it contains buildings and mowed areas and does not contain the primary constituent elements, and is not essential to the conservation of the Guam Micronesian kingfisher. We also

removed 18 ac (7 ha) of private land from the eastern boundary of the unit that does contain the primary constituent elements, but is not essential to the conservation of the Guam Micronesian kingfisher.

Finally, all Navy, Government of Guam, and private lands were excluded from critical habitat designation for the reasons described earlier in the sections entitled ''Exclusions from Critical Habitat.'' Exclusion of Navy lands resulted in the subtraction of 7,015 ac (2,839 ha) from designated critical habitat in southern Guam. Exclusion of Government of Guam lands resulted in the subtraction of 1,349 ac (546 ha) from designated critical habitat in southern Guam. Exclusion of private lands resulted in the subtraction of 1,941 ac (785 ha) from designated critical habitat in southern Guam.

These modifications resulted in the removal of this unit from critical habitat designation. Designated critical habitat for the Guam Micronesian kingfisher is found in northern Guam in the ''Guam Micronesian Kingfisher Unit'' (*see* ''Critical Habitat Designation'' for additional information).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is found to be a significant regulatory action. Because of the Court Ordered deadline, formal Office of Management and Budget (OMB) review was not undertaken. We prepared an economic analysis of this action. The draft economic analysis was made available for public comment and we considered those comments during the preparation of this rule. The economic analysis indicates that this rule will not have an annual economic effect of $100 million or more; based on our economic analysis, the annualized economic effects of this designation are estimated to be $174,624. We have excluded much of these lands analyzed in the draft economic analysis and addendum so the direct economic impacts of the final designation is likely to be substantially lower than this estimate. With approximately 90 percent reduction in acreage and only refuge and Rota lands remaining, the cost may be closer to $463,300 based on 10-year estimates.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The following discussion of the potential economic impacts of this final rule reflects only the views of the Service. This discussion is based upon the information regarding potential economic impact that is available to the Service at this time. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the Service on the type of economic analysis required by the judicial decision in *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act also amended the Regulatory Flexibility Act to require a certification statement. Based on current information, the Service certifies that this final rule will not have a significant effect on a substantial number of small entities.

The Small Business Regulatory Enforcement Fairness Act does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to sustain impacts in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the Regulatory Flexibility Act (*Mid-Tex Electric Co-Op, Inc.* v. *FERC* and *American Trucking Associations, Inc.* v. *EPA*).

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities carried out, authorized, or funded by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species are present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they carry out, authorize, or fund that may affect Mariana fruit bats, Mariana crows, and/or Guam Micronesian kingfishers. When these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species are present, we do not believe this will result in appreciable additional regulatory burdens on Federal agencies or their applicants because consultation would already be required because of the presence of the listed species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical

habitat could result in an additional economic burden on small entities due to the requirement to reinitiate formal consultation for ongoing Federal activities. We have reviewed 209 informal consultations and 37 formal consultations conducted on the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher on Guam since these species were listed in 1984. In addition, we reviewed nine informal consultations conducted on the island of Rota, CNMI, since 1984. No formal consultations have been conducted on Rota since the Mariana crow was listed. Consultations on Federal grants to State wildlife programs, which do not affect small entities, were not reviewed for this final rule. Seventy-seven of the 209 informal consultations on Guam and 3 of the 5 informal consultations on Rota were conducted in response to requests for technical assistance or species lists for different locations on Guam and Rota. The majority of these requests were made by Federal agencies, some on their behalf by private consultants or contractors. Of the 246 total consultations on Guam, 57 informal and 20 formal consultations involved at least one of the species involved in this final rule. Of the nine consultations on Rota, six involved the Mariana crow.

Of the 20 formal consultations on Guam, two may have involved a small entity. Both of these concerned proposals by the Urunao Resort Corporation to have contractors conduct topographic survey work on private and Federal lands for a potential access road through Navy property to private lands. The Mariana fruit bat and Mariana crow were reported from the action areas. The biological opinions (Pacific Islands Fish and Wildlife Office log numbers 1–2–90–F–027 and 1–2–91–F–008) concluded that the proposed action would not result in jeopardy to either species. The reasonable and prudent measures required in the biological opinions to avoid or minimize incidental take of these species did not include major modifications to the proposed action and therefore did not place a significant economic burden on Urunao Resort Corporation. We do not believe this constitutes a substantial number of small entities (see earlier discussion on substantial number). Of the remaining 18 formal consultations on Guam involving the Mariana fruit bat, Mariana crow, and/or Guam Micronesian kingfisher, 10 were conducted on behalf of the Air Force and 8 were conducted on behalf of the Navy. In all of these consultations, the Service concluded that the proposed actions would not result in jeopardy to these three listed species.

Of the 57 informal consultations on Guam, one may have concerned a small entity (private individuals, consulting firms, or nonprofit organizations). The proposed action in this case, the gathering of a large Chamorro family on the Guam National Wildlife Refuge, was determined not likely to adversely affect listed species and was subject only to minor restrictions under a special use permit for the refuge. We do not believe this instance constitutes a substantial number of small entities (see earlier discussion on substantial number). Four informal consultations were conducted on behalf of Government of Guam agencies. One action was determined not likely to adversely affect listed species, and the other was determined to have no effect on listed species. A third was determined not likely to adversely modify the critical habitat proposed in 1991. The fourth consultation on behalf of the Government of Guam concerned technical assistance from the Service and resulted in no regulatory action by the Service or economic burden on the Government of Guam. We conclude, however, that the Government of Guam is not a small entity under the Small Business Regulatory Enforcement Fairness Act.

Of the six informal consultations on Rota that concerned the Mariana crow, none concerned a small entity, and all consultations were conducted on behalf of the Government of the CNMI. Four of these consultations were requests for technical assistance or species lists and resulted in no regulatory action by the Service or economic burden on the Government of the CNMI. The remaining two actions were determined not likely to adversely affect the Mariana crow. We concluded, however, that the Government of the CNMI is not a small entity under the Small Business Regulatory Enforcement Fairness Act.

The remaining 52 informal consultations on Guam exclusively involved the following Federal agencies: U.S. Air Force (27 consultations), U.S. Department of the Navy (14 consultations), U.S. Department of Agriculture (4 consultations), U.S. Fish and Wildlife Service (3 consultations), U.S. Army Corps of Engineers (2 consultations), U.S. Department of the Army (one consultation), and Natural Resources Conservation Service (formally the Soil Conservation Service) (one consultation). None of these agencies is a small entity under the Small Business Regulatory Enforcement Fairness Act. Of these consultations, seven included critical habitat proposed in 1991, and these proposed actions were determined not likely to adversely modify proposed critical habitat. Of the remaining 45 consultations, 38 concluded with our concurrence that the proposed action either would have no effect on, or was not likely to adversely affect, listed species; five consultations were responses to requests for either species lists or technical assistance and did not conclude with a regulatory determination; one concluded with a request by the Service for more information; and one concluded with a determination that the proposed action, Navy training maneuvers, was likely to adversely affect the Mariana crow.

In areas where the species clearly are not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act that otherwise would not be required. The majority of activities in the critical habitat areas for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher that have Federal involvement likely will concern the U.S. Navy or Air Force. As mentioned above, however, only 77 of 246 informal consultations on Guam completed under section 7 of the Act involved any of the species for which critical habitat is being designated. As a result, we cannot easily identify future consultations that may result from the listed status of the species or the increment of additional consultations that may be required by this critical habitat designation. Furthermore, a large proportion of the critical habitat designation on Guam is currently unoccupied by these species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are making the conservative assumption that any future consultations in the area designated as critical habitat on Guam likely will result from the critical habitat designations.

Of the total land area designated as critical habitat on Guam for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher, approximately 15 percent is private land, 21 percent is Government of Guam land, and 64 percent is Federal land. Of the total land area designated as critical habitat for the Mariana crow on Rota, approximately 8 percent is private land and 92 percent is CNMI Government land. Much of the land within the designated critical habitat units has limited potential for development because of the remote locations, lack of access, and rugged terrain of these lands. On non-Federal lands, activities that lack Federal involvement would not be affected by

the critical habitat designations. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these designations consist of improvements to and construction of roads, communications and tracking facilities, and other infrastructure; residential and tourist-related development; ranching and farming; and recreational use, such as camping, picnicking, game hunting, and fishing. With the exception of communications and tracking facilities improvements by the Federal Aviation Administration or the Federal Communications Commission, road building or improvement by the Federal Highway Administration, and water or sewer system development by the Corps of Engineers these activities are unlikely to have Federal involvement. On lands that are or may be in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps of Engineers, and watershed management and restoration projects sponsored by the Natural Resources Conservation Service. However, Natural Resources Conservation Service restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare and may affect only a small percentage of the small entities within these critical habitat designations. Therefore, analysis of currently available information indicates that the final rule would not affect a substantial number of small entities. We are not aware of any commercial activities on the Federal lands included in these critical habitat designations.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or would result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternative(s).

Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of incidental take anticipated to result from the project and require the Federal agency or applicant to implement such measures through nondiscretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or gather information that could contribute to the long-term conservation of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. Furthermore, these measures must be economically feasible, consistent with the intended purpose of the action, and within the scope of authority of the Federal agency involved in the consultation (*see* 50 CFR 404.2, definition of reasonable and prudent alternative). Based on our consultation history, we can describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face, especially as described in the final listing rule and in this critical habitat designation, as well as our experience with the listed species in Guam and Rota. The kinds of actions that may be included in future reasonable and prudent alternatives include, but are not limited to, management of competing nonnative species and predators, restoration of degraded habitat, construction of protective fencing, and regular monitoring. Therefore, such measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic and other impacts of this critical habitat designation, and we made this analysis available for public review and comment before finalizing these designations.

In summary, we have considered whether this final rule would result in a significant economic effect on a substantial number of small entities. Currently available information indicates it would not affect a substantial number of small entities. None of the lands designated as critical habitat on Guam are on Government of Guam lands. In addition, approximately 92 percent of the lands designated as critical habitat on Rota are on Government of the CNMI lands. The Territory of Guam and CNMI are not small entities under the Small Business Regulatory Enforcement Fairness Act. None of the lands designated as critical habitat on Guam and 8 percent of lands proposed as critical habitat on Rota are on private lands. As discussed earlier, many of the actions likely to occur on the private land parcels included in this proposal are not likely to require any Federal authorization. In the remaining areas, section 7 application, the only trigger for regulatory impact under this rule, largely would be limited to a subset of the area designated. The most likely future section 7 consultations resulting from this rule would be for informal consultations on actions proposed by the military, federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by the Natural Resources Conservation Service. These consultations likely would occur on only a subset of the total number of parcels and, therefore, are not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even if it did occur, we would not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Thus, currently available information indicates that the designation of critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher will not have a significant economic impact on

a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the draft economic analysis and the final addendum to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Please refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though current information indicates this final rule would be a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan does not appear to be required. Small governments would be affected only to the extent that any programs having Federal funds, permits, or other authorized activities would have to ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to similar restrictions through the listing protections of the species, and further restrictions are not anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we evaluated the impact of designating unoccupied areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule will not produce on State, local, or Tribal governments or the private sector a Federal mandate of $100 million or greater in any year, so it does not meet the criteria for a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have preliminarily analyzed the potential takings implications of the designating critical habitat in a preliminary takings implication assessment, which indicates that this rule would not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Mariana fruit bat and Mariana crow and in areas unoccupied by these species and the Guam Micronesian kingfisher would have little incremental impact on the Government of Guam or the CNMI and their activities. The designations may have some benefit to the Government of Guam and the CNMI in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of these species are identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist the Government of Guam and the CNMI in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. 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 Office of Management and Budget control number.

National Environmental Policy Act

We have determined that we do not have to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The designated critical habitat on Guam and Rota for the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available upon request from our Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authors

This document was drafted by the Pacific Islands Fish and Wildlife Office with assistance from the U.S. Department of the Interior (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), the entries for "Bat, Mariana fruit'' under "MAMMALS,'' "Kingfisher, Guam Micronesian'' under "BIRDS,'' and "Crow, Mariana'' under "BIRDS'' are revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Bat, Mariana fruit (=Mariana flying fox).	*Pteropus mariannus mariannus.*	Western Pacific Ocean USA (Guam, Commonwealth of the Northern Mariana Islands).	Guam	E	156	17.95(a)	NA
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Crow, Mariana	*Corvus kubaryi*	Western Pacific Ocean USA (Guam, Rota).	Entire	E	156	17.95(b)	NA
*	*	*	*	*	*		*
Kingfisher, Guam Micronesian.	*Halcyon cinnamomina cinnamomina.*	Western Pacific Ocean USA (Guam).	Entire	E	156	17.95(b)	NA
*	*	*	*	*	*		*

■ 3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

■ a. In paragraph (a), critical habitat for the Mariana fruit bat (*Pteropus mariannus mariannus*) as set forth below; and

■ b. In paragraph (b), critical habitat for the Mariana crow (*Corvus kubaryi*) and Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*) as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Mariana Fruit Bat (*Pteropus mariannus mariannus*)

(1) The critical habitat unit for the Mariana fruit bat is depicted for the Territory of Guam on the maps below.

(2) Within this area, the primary constituent elements required by the Mariana fruit bat for the biological needs of foraging, sheltering, roosting, and rearing of young are found in areas supporting limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native or introduced plant species. These forest types provide the primary constituent elements of:

(i) Plant species used for foraging, such as *Artocarpus* sp. (breadfruit), *Carica papaya* (papaya), *Cycas circinalis* (fadang), *Ficus* spp. (fig), *Pandanus tectorius* (kafu), *Cocos nucifera* (coconut palm), and *Terminalia catappa* (talisai); and

(ii) Remote locations, often within 328 ft (100 m) of clifflines that are 260 to 590 ft (80 to 100 m) tall, with limited exposure to human disturbance; land that contains mature fig, *Mammea odorata* (chopak), *Casuarina equisetifolia* (gago), *Macaranga thompsonii* (pengua), *Guettarda speciosa* (panao), *Neisosperma oppositifolia* (fagot), and other tree species that are used for roosting and breeding.

(3) Critical habitat does not include existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) The critical habitat unit is described below. Coordinates are in UTM Zone 55 with units in meters using North American Datum of 1983 (NAD83)/World Geodetic System 1984 (WGS 84).

(i) **Note:** Map 1—General Location of the Mariana Fruit Bat Unit follows:

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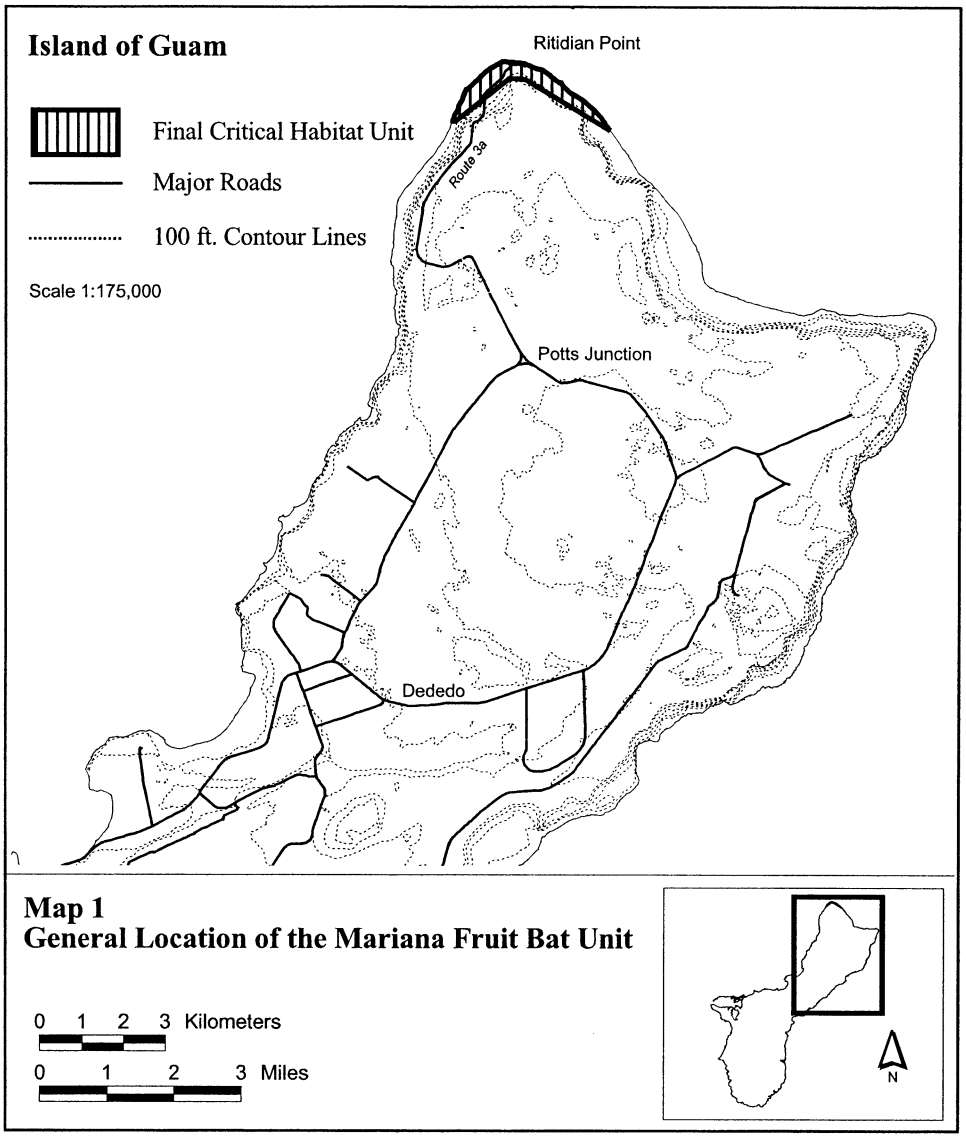
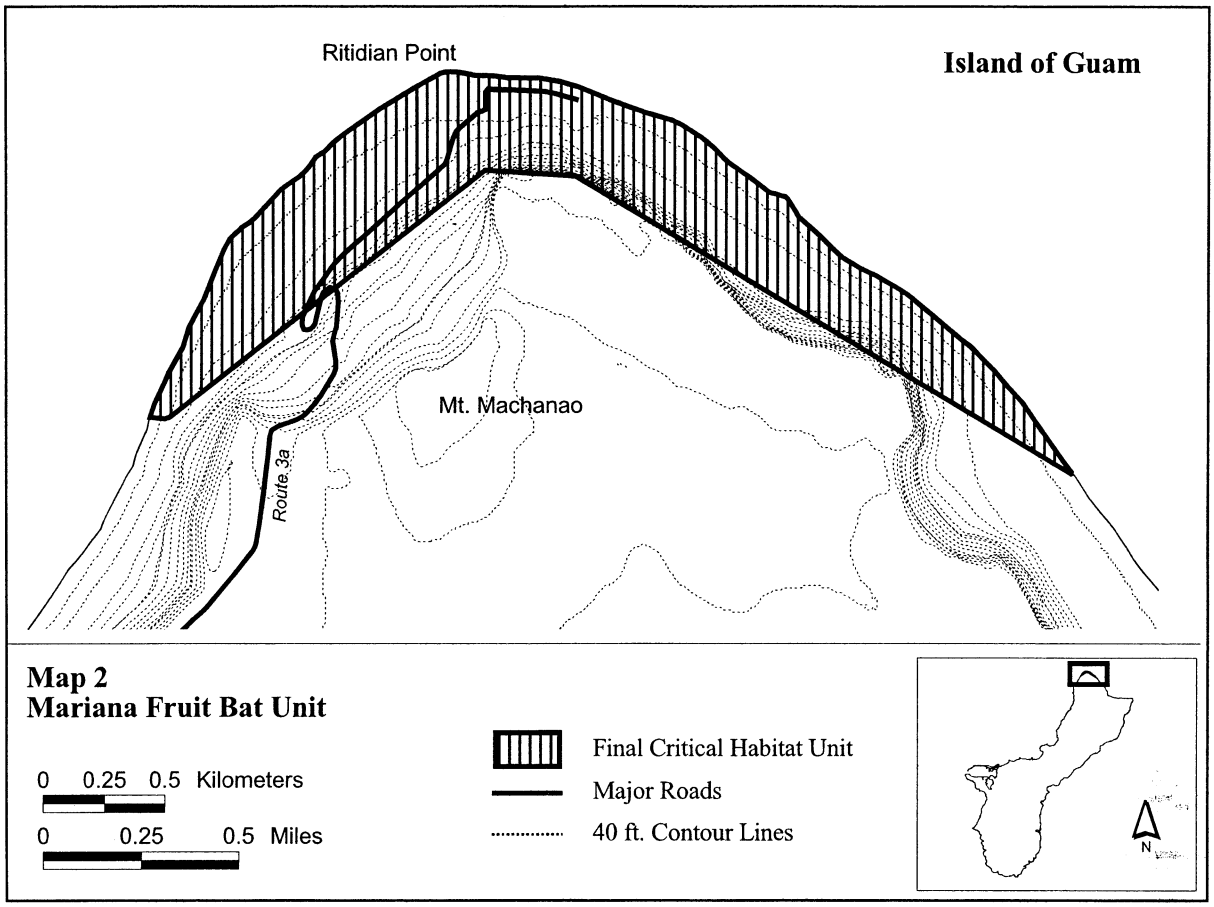


Map 1
General Location of the Mariana Fruit Bat Unit

(ii) Guam, Mariana fruit bat (376 ac; 152 ha).

(A) Unit consists of the following nine boundary points: 267358, 1509113; 267338, 1509107; 267277, 1509113; 271077, 1508881; 271071, 1508878; 270766, 1509058; 269030, 1510105; 268659, 1510129; 267697, 1509376.

(B) **Note:** Map 2 showing Mariana Fruit Bat Unit follows:



* * * * *

(b) *Birds.*

* * * * *

Mariana Crow (*Corvus kubaryi*)

(1) Critical habitat units for the Mariana crow are depicted for the Territory of Guam and the island of Rota, Commonwealth of the Northern Mariana Islands, on the maps below.

(2) The primary constituent elements required by the Mariana crow for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types provide the primary constituent elements of:

(i) Emergent trees and subcanopy trees with dense cover for breeding, such as *Neisosperma oppositifolia* (fagot), *Macaranga thompsonii* (pengua), *Intsia bijuga* (ifit), *Premna obtusifolia* (ahgao), *Eugenia reinwardtiana* (aabang), *Ficus* spp. (fig), *Elaeocarpus joga* (yoga), and *Tristiropsis obtusangula* (faniok);

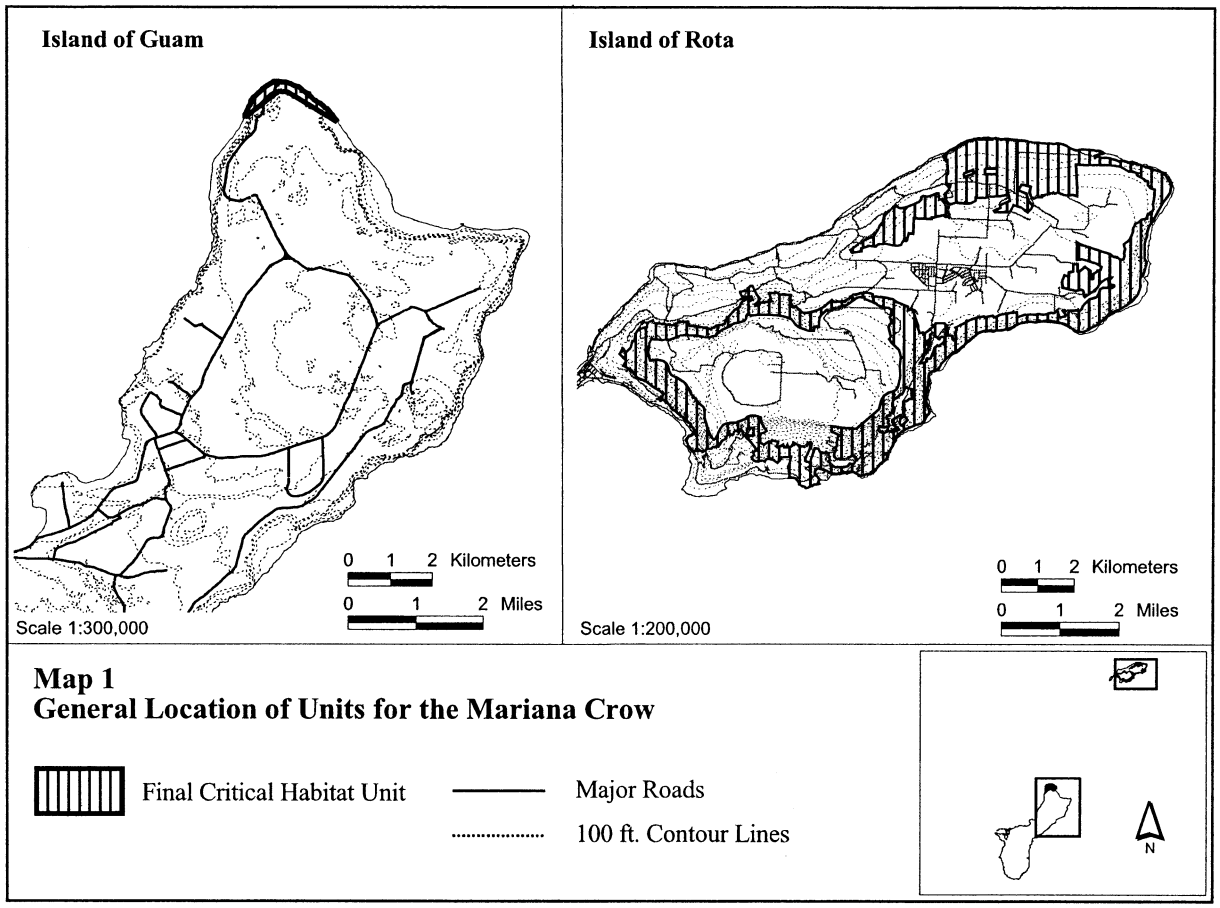
(ii) Sufficient area of predominantly native forest to allow nesting at least 950 ft (290 m) from the nearest road and 203 ft (62 m) from the nearest forest edge and to support Mariana crow breeding territories (approximately 30 to 91 ac (12 to 37 ha)) and foraging areas for nonbreeding juvenile crows; and

(iii) Standing dead trees and plant species for foraging such as *Aglaia mariannensis* (maypunayo), *Artocarpus* spp. (breadfruit), *Cocos nucifera* (coconut palm), fagot, *Hibiscus tiliaceus* (pago), ifit, *Leucaena* spp. (tangantangan), *Ochrosia mariannensis* (langiti), *Pandanus tectorius* (kafu), ahgao, fig, and joga.

(3) Critical habitat does not include existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat units are described below. Coordinates are in UTM Zone 55 with units in meters using North American Datum of 1983 (NAD83)/ World Geodetic System 1984 (WGS 84).

(i) **Note:** Map 1—General Locations of Units for the Mariana Crow follows:

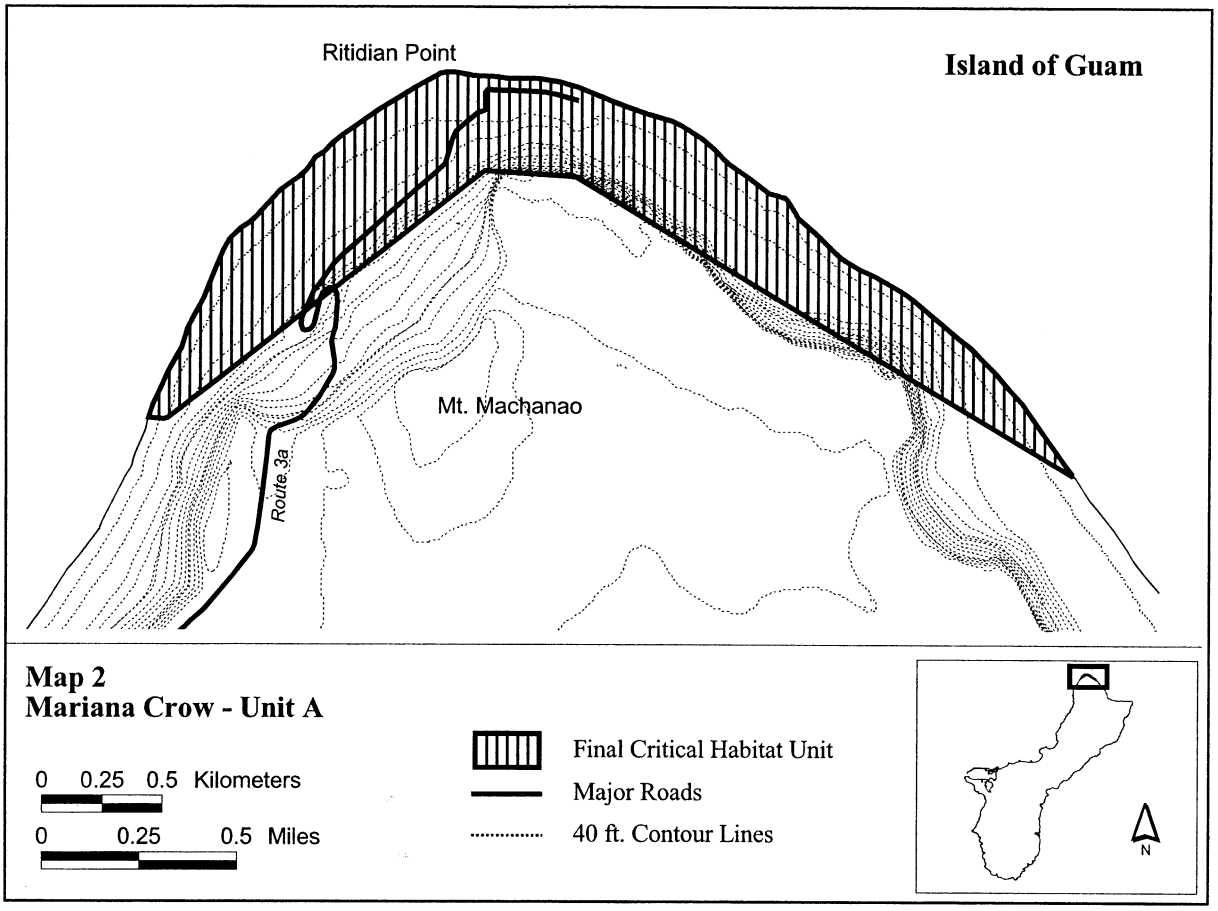


Map 1
General Location of Units for the Mariana Crow

(ii) Guam, Mariana crow—Unit A (376 ac; 152 ha):

(A) Unit A consists of the following nine boundary points: 267358, 1509113; 267338, 1509107; 267277, 1509113; 271077, 1508881; 271071, 1508878; 270766, 1509058; 269030, 1510105; 268659, 1510129; 267697, 1509376.

(B) **Note:** Map 2 showing Unit A for Mariana crow follows:



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(iii) Rota, Mariana crow—Unit B (6,033 ac; 2,442 ha):

(A) Subunit B–1 (5,668 ac; 2,294 ha) consists of the following 659 boundary points: 309251, 1569048; 309301, 1569048; 309410, 1569197; 309423, 1569292; 309304, 1569302; 309319, 1569585; 309357, 1569581; 309355, 1569603; 309339, 1569952; 309301, 1569932; 309216, 1570065; 309393, 1570214; 309698, 1570373; 309955, 1570475; 310209, 1570549; 310304, 1570532; 310484, 1570542; 310684, 1570556; 310823, 1570522; 310988, 1570530; 311235, 1570509; 311484, 1570490; 311620, 1570458; 311690, 1570436; 311807, 1570430; 312089, 1570412; 312189, 1570420; 312276, 1570402; 312346, 1570422; 312447, 1570412; 312539, 1570386; 312631, 1570349; 312734, 1570290; 312853, 1570230; 312913, 1570240; 313008, 1570257; 313130, 1570243; 313360, 1570238; 313441, 1570212; 313526, 1570211; 313598, 1570186; 313620, 1570151; 313479, 1570121; 313387, 1570081; 313382, 1570051; 313488, 1570070; 313550, 1570037; 313621, 1570022; 313704, 1570035; 313805, 1570011; 313843, 1569989; 313932, 1569975; 313986, 1569956; 314024, 1569934; 314116, 1569951; 314228, 1569932; 314336, 1569901; 314417, 1569879; 314482, 1569883; 314529, 1569853; 314810, 1569769; 315250, 1569625; 315296, 1569566; 315344, 1569506; 315399, 1569417; 315448, 1569341; 315469, 1569243; 315450, 1569091; 315369, 1568959; 315274, 1568839; 315222, 1568741; 315111, 1568557; 314963, 1568264; 314881, 1568159; 314832, 1568004; 314827, 1567899; 314786, 1567817; 314751, 1567701; 314753, 1567609; 314761, 1567278; 314810, 1567191; 314816, 1567112; 314767, 1567015; 314724, 1566831; 314648, 1566774; 314637, 1566722; 314642, 1566578; 314661, 1566508; 314564, 1566294; 314407, 1566085; 314241, 1565987; 314051, 1565865; 313943, 1565830; 313816, 1565771; 313656, 1565613; 313463, 1565456; 313333, 1565386; 313214, 1565304; 313076, 1565261; 312973, 1565250; 312916, 1565275; 312799, 1565334; 312734, 1565396; 312593, 1565475; 312311, 1565540; 312184, 1565554; 312037, 1565556; 311932, 1565551; 311799, 1565524; 311560, 1565537; 311433, 1565515; 311270, 1565453; 311140, 1565372; 311018, 1565334; 310901, 1565312; 310628, 1565283; 310525, 1565285; 310408, 1565293; 310272, 1565264; 310194, 1565226; 310132, 1565158; 310058, 1565104; 309912, 1564984; 309828, 1564908; 309734, 1564821; 309609, 1564707; 309492, 1564673; 309386, 1564583; 309213, 1564399; 309101, 1564206; 308944, 1564168; 308874, 1564128; 308849, 1564068; 308855, 1564017; 308852, 1563900; 308836, 1563803; 308814, 1563662; 308779, 1563537; 308779, 1563415; 308773, 1563328; 308806, 1563285; 308809, 1563212; 308863, 1563087; 308866, 1563011; 308814, 1562959; 308776, 1562905; 308741, 1562843; 308730, 1562778; 308665, 1562734; 308583, 1562702; 308535, 1562705; 308229, 1562564; 308080, 1562485; 307987, 1562390; 307929, 1562325; 307947, 1562257; 307914, 1562238; 307898, 1562192; 307833, 1562054; 307765, 1561919; 307705, 1561910; 307672, 1561903; 307667, 1561864; 307725, 1561834; 307724, 1561797; 307673, 1561715; 307535, 1561609; 307391, 1561447; 307228, 1561325; 307158, 1561333; 307012, 1561277; 306779,

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(B) Excluding seven areas:

(*1*) Bounded by the following five points (7 ac; 3 ha): 309786, 1569596; 309800, 1569484; 310060, 1569596; 310059, 1569695; 310055, 1569695.

(*2*) Bounded by the following four points (13 ac; 5 ha): 310365, 1569567; 310716, 1569564; 310716, 1569718; 310366, 1569717.

(*3*) Bounded by the following 53 points (46 ac; 19 ha): 308686, 1564398; 308762, 1564422; 308791, 1564444; 308793, 1564466; 308784, 1564497; 308797, 1564525; 308821, 1564528; 308848, 1564503; 308874, 1564514; 308905, 1564532; 308955, 1564666; 308979, 1564736; 308994, 1564814; 309056, 1564845; 309090, 1564889; 309126, 1564869; 309248, 1564976; 309277, 1565027; 309288, 1565060; 309280, 1565083; 309271, 1565117; 309213, 1565113; 309170, 1565106; 309132, 1565058; 309100, 1565068; 309047, 1565112; 308992, 1565145; 308979, 1565217; 308948, 1565228; 308887, 1565176; 308883, 1565150; 308900, 1565075; 308876, 1564990; 308839, 1564994; 308821, 1564996; 308791, 1564924; 308813, 1564898; 308839, 1564906; 308870, 1564928; 308878, 1564915; 308808, 1564760; 308756, 1564683; 308703, 1564628; 308672, 1564595; 308668, 1564571; 308677, 1564563; 308716, 1564574; 308718, 1564560; 308673, 1564489; 308647, 1564459; 308607, 1564406; 308654, 1564386; 308671, 1564401.

(*4*) Bounded by the following 80 points (84 ac; 34 ha): 307624, 1562456; 307687, 1562504; 307700, 1562504; 307723, 1562493; 307768, 1562521; 307804, 1562511; 307827, 1562494; 307871, 1562552; 307897, 1562565; 307928, 1562565; 307943, 1562545; 307959, 1562519; 307976, 1562515; 308031, 1562572; 307996, 1562594; 307980, 1562618; 307978, 1562640; 307930, 1562655; 307908, 1562675; 307891, 1562697; 307891, 1562743; 307856, 1562771; 307851, 1562810; 307902, 1562852; 308068, 1562957; 308134, 1562964; 308164, 1562997; 308173, 1563049; 308204, 1563115; 308197, 1563150; 308171, 1563159; 308149, 1563172; 308158, 1563220; 308153, 1563290; 308153, 1563334; 308184, 1563347; 308234, 1563340; 308316, 1563418; 308398, 1563405; 308418, 1563437; 308367, 1563499; 308373, 1563676; 308215, 1563726; 308158, 1563576; 308126, 1563534; 308091, 1563547; 308052, 1563487; 308025, 1563486; 307965, 1563436; 307886, 1563373; 307872, 1563313; 307872, 1563199; 307896, 1563181; 307911, 1563141; 307871, 1563095; 307869, 1563073; 307904, 1563069; 307880, 1563003; 307862, 1563010; 307849, 1563025; 307803, 1563019; 307807, 1562964; 307792, 1562951; 307753, 1562946; 307713, 1562935; 307700, 1562911; 307704, 1562881; 307753, 1562828; 307768, 1562797; 307733, 1562745; 307731, 1562727; 307781, 1562683; 307729, 1562598; 307713, 1562633; 307689, 1562635; 307646, 1562613; 307495, 1562647; 307488, 1562556; 307488, 1562533; 307495, 1562490.

(*5*) Bounded by the following seven points (9 ac; 3 ha): 308109, 1562663; 308114, 1562663; 308280, 1562825; 308197, 1562937; 308066, 1562859; 308074, 1562799; 308043, 1562743.

(*6*) Bounded by the following 225 points (4,517 ac; 1,828 ha): 304411, 1562555; 304424, 1562519; 304395, 1562481; 304302, 1562446; 304273, 1562406; 304249, 1562358; 304254, 1562282; 304261, 1562234; 304267, 1562190; 304322, 1562154; 304363, 1562125; 304393, 1562154; 304450, 1562187; 304496, 1562219; 304553, 1562195; 304591, 1562252; 304677, 1562222; 304751, 1562222; 304756, 1562184; 304707, 1562097; 304732, 1562065; 304778, 1562078; 304848, 1562116; 304883, 1562133; 304897, 1562100; 304919, 1562054; 304965, 1562055; 305014, 1562130; 305027, 1562070; 305087, 1562070; 305138, 1562106; 305178, 1562184; 305273, 1562139; 305332, 1562082; 305502, 1562089; 305578, 1562186; 305634, 1562202; 305663, 1562153; 305654, 1562055; 305625, 1562051; 305559, 1561906; 305499, 1561766; 305502, 1561677; 305536, 1561661; 305583, 1561645; 305628, 1561651; 305657, 1561733; 305750, 1562039; 305797, 1562046; 305851, 1562027; 305884, 1561946; 305962, 1561919; 306000, 1561908; 306049, 1561932; 306083, 1561909; 306124, 1561894; 306125, 1561840; 306152, 1561740; 306149, 1561664; 306171, 1561612; 306196, 1561564; 306331, 1561523; 306475, 1561523; 306637, 1561536; 306678, 1561599; 306697, 1561618; 306795, 1561601; 306862, 1561696; 306865, 1561764; 306854, 1561781; 306837, 1561785; 306821, 1561831; 306726, 1561820; 306597, 1561737; 306383, 1561737; 306312, 1561775; 306280, 1561824; 306280, 1561867; 306328, 1561986; 306326, 1562043; 306369, 1562146; 306348, 1562193; 306359, 1562248; 306396, 1562413; 306211, 1562495; 306212, 1562642; 306491, 1562590; 306893, 1562575; 307497, 1563122; 307570, 1563395; 307632, 1563500; 307765, 1563576; 307881, 1563606; 307963, 1563657; 308014, 1563772; 308065, 1564029; 308062, 1564310; 308088, 1564565; 308044, 1564754; 307833, 1564944; 307768, 1565047; 307819, 1565112; 307805, 1565168; 307749, 1565378; 307765, 1565443; 307822, 1565486; 307811, 1565570; 307779, 1565654; 307817, 1565697; 307825, 1565828; 307842, 1565852; 307741, 1565909; 307639, 1565920; 307442, 1565987; 307386, 1566039; 307223, 1566107; 307152, 1566137; 307112, 1566137; 307082, 1566183; 307047, 1566199; 306955, 1566199; 306887, 1566191; 306824, 1566142; 306643, 1566020; 306544, 1565957; 306401, 1565931; 306247, 1565886; 306225, 1565841; 306113, 1565820; 306065, 1565846; 305956, 1565740; 305864, 1565621; 305851, 1565381; 305732, 1565386; 305724, 1565275; 305583, 1565276; 305305, 1565376; 305244, 1565424; 305104, 1565593; 304938, 1565657; 304768, 1565694; 304538, 1565717; 304173, 1565710; 304059, 1565694; 303985, 1565704; 303930, 1565725; 303903, 1565726; 303881, 1565697; 303879, 1565686; 303866, 1565617; 303819, 1565548; 303760, 1565524; 303670, 1565498; 303545, 1565484; 303504, 1565453; 303445, 1565416; 303355, 1565352; 303191, 1565289; 303022, 1565141; 302927, 1565120; 302874,

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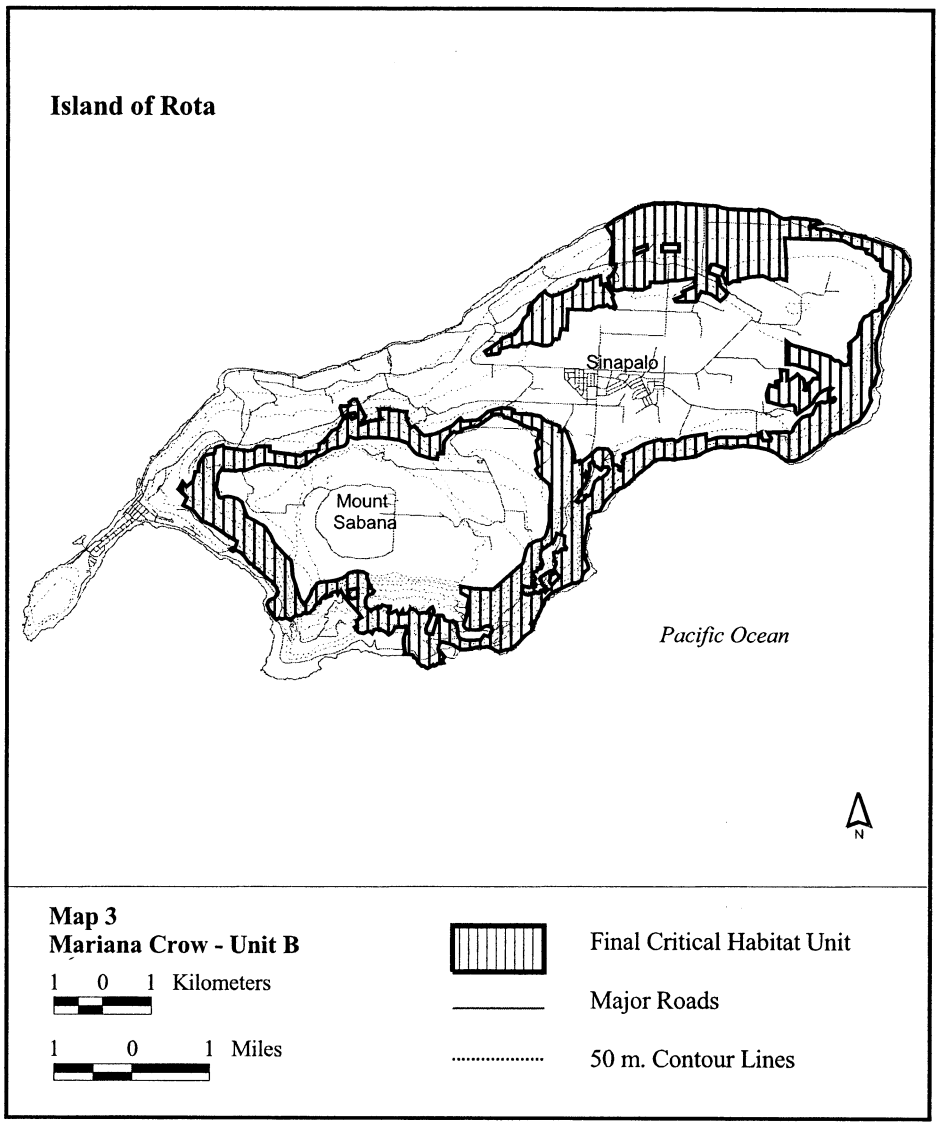
(*7*) Bounded by the following nine points (9 ac; 3 ha): 303885, 1562540; 303916, 1562411; 303966, 1562370; 304088, 1562398; 304081, 1562449; 304077, 1562587; 304072, 1562590; 303992, 1562579; 303895, 1562564.

(C) Subunit B–2 (365 ac; 148 ha) consists of the following 64 boundary points: 308173, 1567760; 308132, 1567750; 308105, 1567693; 308088, 1567642; 308013, 1567625; 307908, 1567625; 307634, 1567679; 307580, 1567659; 307475, 1567659; 307410, 1567632; 307391, 1567599; 307208, 1567603; 307154, 1567586; 306999, 1567537; 307000, 1567462; 306988, 1567448; 306749, 1567420; 306700, 1567489; 306815, 1567568; 307027, 1567721; 307024, 1567751; 307254, 1567843; 307310, 1567846; 307444, 1568042; 307502, 1568160; 307586, 1568258; 307614, 1568414; 307732, 1568533; 307837, 1568655; 307942, 1568733; 307986, 1568682; 308071, 1568641; 308190, 1568658; 308312, 1568709; 308444, 1568763; 308559, 1568814; 308634, 1568872; 308630, 1568950; 308684, 1568980; 308810, 1568956; 308942, 1569004; 309033, 1569041; 309095, 1569049; 309113, 1568883; 309233, 1568887; 309213, 1568855; 309372, 1568655; 309345, 1568604; 309386, 1568509; 309416, 1568424; 309399, 1568380; 309335, 1568424; 309288, 1568401; 309243, 1568452; 309196, 1568431; 309108, 1568428; 309054, 1568428; 308968, 1568389; 308922, 1568387; 308909, 1568356; 308422, 1568364; 308411, 1567945; 308285, 1567960; 308240, 1567738.

(D) **Note:** Map 3 showing Unit B for Mariana crow follows:

BILLING CODE 4310–55–P



* * * * *

Guam Micronesian Kingfisher (*Halcyon cinnamomina cinnamomina*)

(1) The critical habitat unit for the Guam Micronesian kingfisher is depicted for the Territory of Guam on the maps below.

(2) The primary constituent elements required by the Guam Micronesian kingfisher for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types include the primary constituent elements of:

(i) Closed canopy and well-developed understory vegetation; large (approximately 43 cm (17 in) diameter at breast height), standing dead trees (especially *Tristiropsis obtusangula* (faniok), *Pisonia grandis* (umumu), *Artocarpus* spp. (breadfruit), *Ficus* spp. (fig), and *Cocos nucifera* (coconut palm)); mud nests of *Nasutitermes* spp. termites; and root masses of epiphytic ferns for breeding;

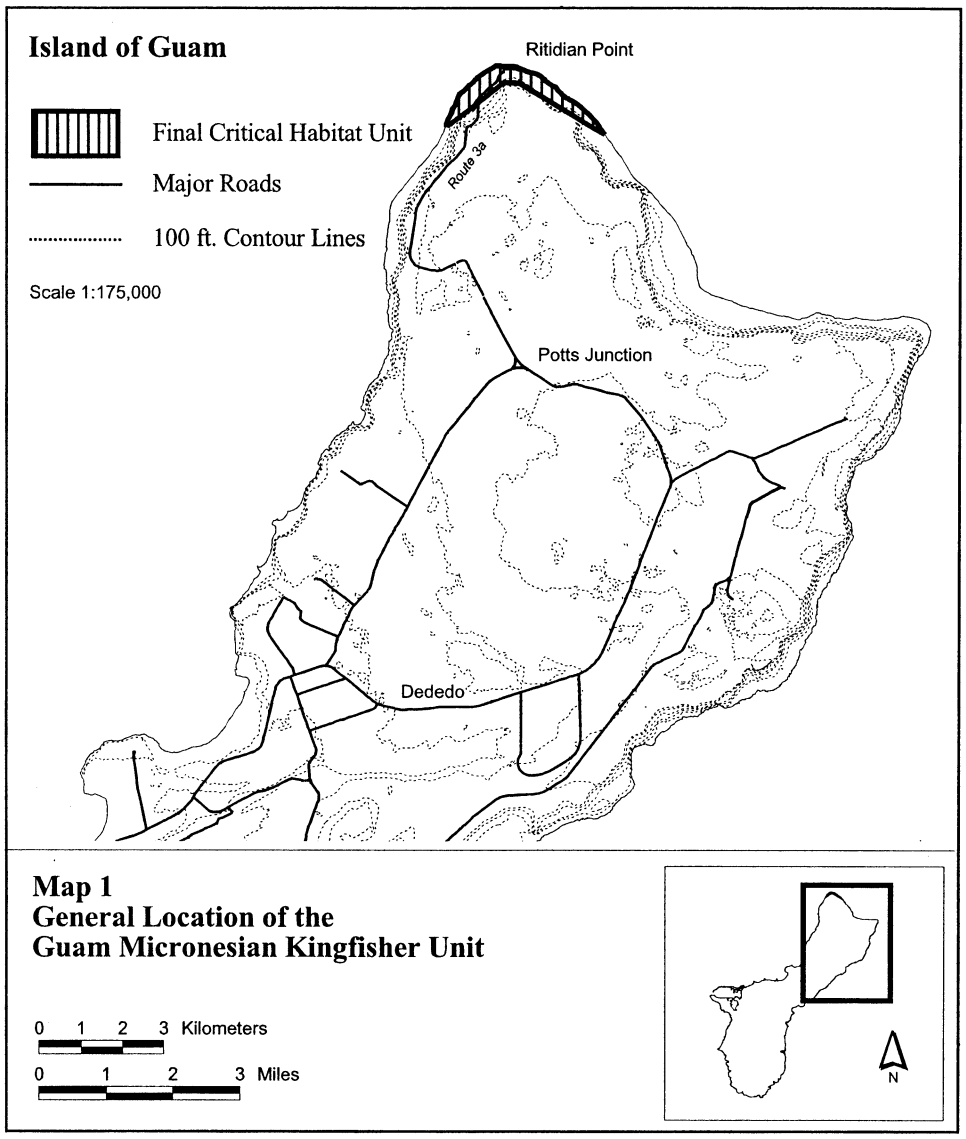
(ii) Sufficiently diverse structure to provide exposed perches and ground surfaces, leaf litter, and other substrates that support a wide range of vertebrate and invertebrate prey species for foraging kingfishers; and

(iii) Sufficient overall breeding and foraging area to support kingfisher territories of approximately 25 ac (10 ha) each.

(3) Critical habitat does not include existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) The critical habitat unit is described below. Coordinates are in UTM Zone 55 with units in meters using North American Datum of 1983 (NAD83) / World Geodetic System 1984 (WGS 84).

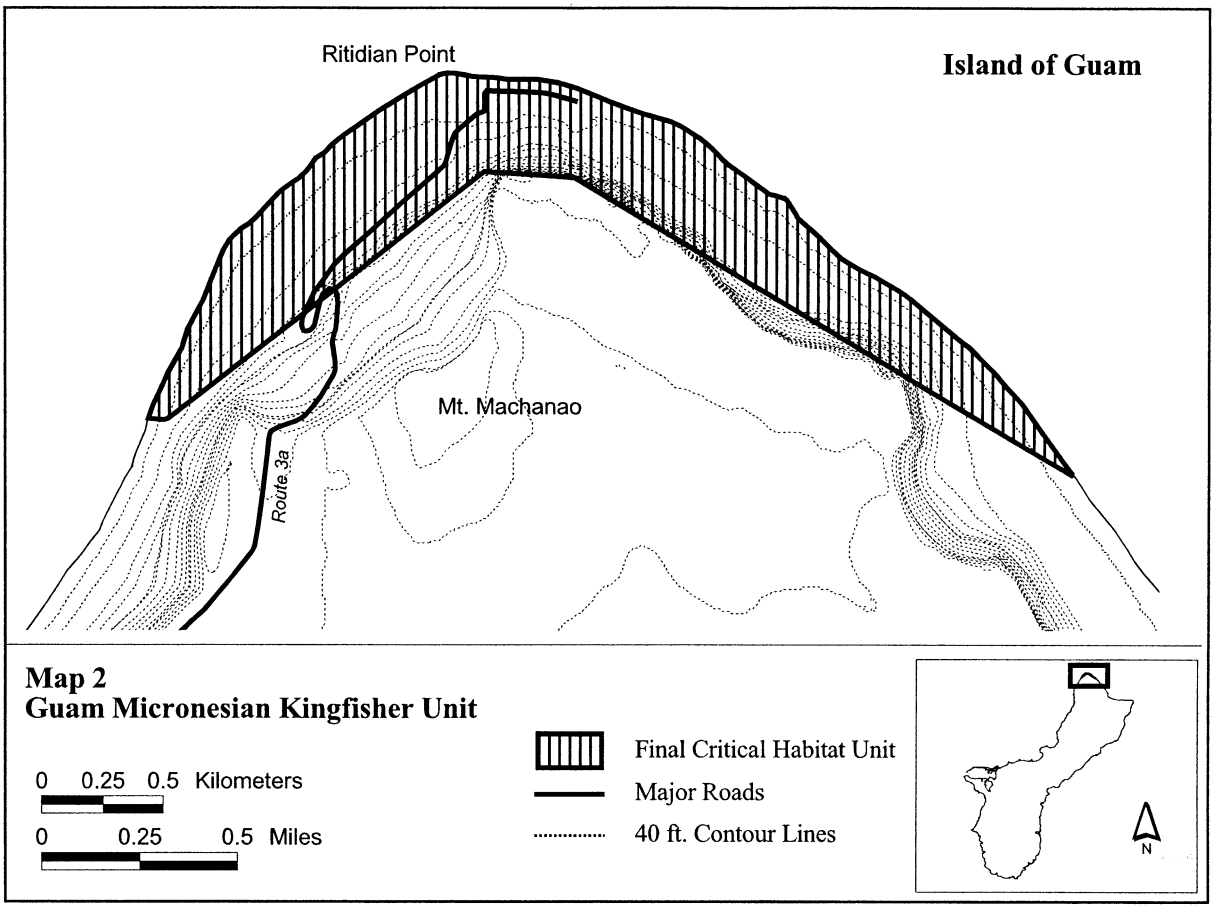
(i) **Note:** Map 1-General Location of the Guam Micronesian Kingfisher Unit—follows:



(ii) Guam, Guam Micronesian kingfisher (376 ac; 152 ha):

(A) Unit consists of the following nine boundary points: 267358, 1509113; 267338, 1509107; 267277, 1509113; 271077, 1508881; 271071, 1508878; 270766, 1509058; 269030, 1510105; 268659, 1510129; 267697, 1509376.

(B) **Note:** Map 2 showing Guam Micronesian Kingfisher Unit follows:



BILLING CODE 4310–55–C

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Dated: October 18, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–23648 Filed 10–27–04; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
October 28, 2004

Part III

Department of Housing and Urban Development

Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4936–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2004

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2004, and ending on March 31, 2004.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with—or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the first quarter of calendar year 2004.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register.** These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers waivers of regulations granted by HUD from January 1, 2004, through March 31, 2004. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report before the next report is published, the next updated report will include these earlier waivers that were granted, as well as those that occurred during January 1, 2004, through March 31, 2004.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: October 20, 2004.

Kathleen D. Koch,

Acting General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2004, Through March 31, 2004

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.
II. Regulatory waivers granted by the Office of Housing.
III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 91.115(c)(2), 24 CFR 91.325(d)(1), 24 CFR 92.209(b–k), 24 CFR 92.250, 24 CFR 92.251, 24 CFR 92.253(d), 24 CFR 92.218(a), 24 CFR 92.219(a), 24 CFR 92.221, 24 CFR 92.222(b), 24 CFR 92.300(a)(1), 24CFR 92.301, 24 CFR 92.303.

Project/Activity: The State of North Carolina requested HUD grant waivers of several HOME regulatory provisions in order to provide immediate assistance to residents adversely affected by Hurricane Isabel.

Nature of Requirements: The North Carolina Housing Finance Agency (NCHFA) requested the waiver of the following provisions in the Consolidated Plan and the HOME program regulations that relate to the citizen participation requirements, per unit subsidy limits property standards tenant protections match and tenant participation. The NCHFA stated that relief from these regulations would allow it to immediately respond to residents in need due to damage caused by the storm by providing tenant based rental assistance funds and other disaster assistance.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: February 17, 2004.

Reasons Waived: Due to the severity of the storm damage from Hurricane Isabel, there was good cause to waive the regulations requested by NCHFA.

Contact: Lisa Newman, Secretary, Office of Field Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–2565.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following regulatory waivers, please see the name of

the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	City	State
8335374	Bismarck Apartments	Covington	KY
8335387	California Square II Apartments	Louisville	KY
8335358	Castle Village	Brodhead	KY
1335116	Champlain Family Housing	Rouses Point	NY
6235390	Fair Park Apartments	Birmingham	AL
12735328	Fern Hill Terrace	Tacoma	WA
5635065	La Torrecilla Development	Barranquitas	PR
8535323	Lakewood Apartments	Columbia	MO
5335400	Lynnhaven Apartments	Durham	NC
6235344	Mill Run Apartments	Mobile	AL
6135383	Moultrie Manor Apartments	Moultrie	GA
8535343	Murphy Blair Rehab III	Saint Louis	MO
6735246	Ridgedale Apartments	Avon Park	FL
6735243	Ridgewood Apartments	Winter Haven	FL
8435258	Ridgewood Hills	Harrisonville	MO
5335385	Robin Ridge Apartments	Robbinsville	NC
10935054	Shoshone Court	Cody	WY
13335055	Sierra Vista Apartments	El Paso	TX
10135241	Summersong Townhouses	Denver	CO
1732024	Underwood III	Hartford	CT

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 30, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	City	State
1235472	Barkley Gardens	Liberty	NY
2435040	Chestnut Place	Lewiston	ME
1257060	Concourse Plaza	Bronx	NY
1257205	Dean North Apartments	Brooklyn	NY
4235336	Eastland Woods	Akron	OH
7135428	Evergreen Terrace I	Joliet	IL
1335095	Faxton Scott House (aka Margaret Knamm Apts)	Utica	NY
4235396	Findlay Green Apartments	Findlay	OH
1335102	James F. Lettis Apartments	Oneonta	NY
11835102	McAlester Plaza	McAlester	OK
4235373	Newton Woods	Akron	OH
6235355	Oak Trace Apartments	Tuscaloosa	AL
1257162	Pennsylvania Avenue Apartments	Brooklyn	NY
5235307	Poppleton Place Apartments	Baltimore	MD
4235331	Shaker Boulevard Gardens	Cleveland	OH
3135269	St. Mary's Villa	Newark	NJ
8435196	Sullivan Hall	Slater	MO
1257148	The Gateways (aka Greenport Apartments)	Far Rockaway	NY
4235384	The Plaza Apartments	Toledo	OH
1257180	Union Gardens I	Brooklyn	NY
1257161	Unity Apartments	Brooklyn	NY
2335253	Villa Nueva Vista	Springfield	MA
1735210	Village Apartments	South Meriden	CT
3435186	Williamsport NSA	Williamsport	PA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 30, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring

analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	City	State
00035283	Atlantic Gardens	Washington	DC
3135228	Avon Hills Apartments	Newark	NJ
08335362	Bedford Commons Apartments	Bedford	KY
01335083	Mansions Rehab Project	Albany	NY
06135285	Oakland City/West End Apartments	Atlanta	GA
06135285	Oakland City/West End Apartments	Atlanta	GA
01335122	Pastures Preservation (Pastures Redevelopment)	Albany	NY
08735146	Pikeville Townhouses	Pikeville	TN
04235391	Springhill Homes	Akron	OH
08535348	Union Sarah 510 Demonstration	Saint Louis	MO

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 23, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	City	State
01257186	Bedford Stuyvesant NSAI	Brooklyn	NY
01335105	Brandegee Gardens	Utica	NY
01257141	Bruckner Houses	Bronx	NY
03435185	Cobbs Creek NSA	Philadelphia	PA
01257075	Davidson Avenue Rehab II	Bronx	NY
06235161	Four Winds East Apartments	Birmingham	AL
05135300	John Perry House	Woodstock	VA
04335293	Lawrence Commons	South Point	OH
01335117	Lillian Y. Cooper Apartments	Utica	NY
04335238	McArthur Park	Mc Arthur	OH
01235449	Pinecrest Manor	Mount Kisco	NY
05435473	Spruce Pines Apartments	Landrum	SC
07335448	The Crossings II Apartments	Evansville	IN
01257161	Unity Apartments	Brooklyn	NY
04235385	Vistula Heritage II	Toledo	OH

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 23, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone (202) 708–3856.

• Regulation: 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	City	State
1257294	1451 Development	Brooklyn	NY
7335457	Bremen Village Apartments	Bremen	IN
2435046	Centre Ville Commons	Lewiston	ME
4235399	Fostoria Green	Fostoria	OH
5235385	Foxwell Memorial Apartments	Baltimore	MD
6235350	Hermitage Knoll Apartments	Florence	AL
4435497	Himelhoch Apartments	Detroit	MI
6235380	Isle Parkway Apartments	Mobile	AL
4735009	Little Blue Lake Cooperative	Blue Lake Township	MI

FHA No.	Project	City	State
10135344	Mount Massive Manor	Leadville	CO
1257171	Parkview (aka North Flatbush Apartments)	Brooklyn	NY
1257285	Penn Gardens I	Brooklyn	NY
6235360	Rickwood Apartrments	Birmingham	AL
1335106	Schenectady Forty	Schenectady	NY
10135332	Silver Spruce Apartments	Kremmling	CO
5335346	Walnut West Apartments	Elizabeth City	NC
5335456	Westside Apartments	Charlotte	NC

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	City	State
1257076	1988 Davidson Avenue	Bronx	NY
7235081	Bissel Apartments	Venice	IL
1257060	Concourse Plaza	Bronx	NY
1257252	Featherbed Lane	Bronx	NY
1335108	Genesee Towers	Utica	NY
6235367	Janmar Apartments	Birmingham	AL
1257164	Jerome Terrace Apartments	Bronx	NY
1235312	Marion Avenue Rehabilitation	Bronx	NY
11335005	Prince Hall Gardens II	Fort Worth	TX
2335172	Schoolhouse 77	Roxbury	MA
1255173	Siloam House	Brooklyn	NY
8335339	Town House Apts.	Livermore	KY
10935048	Village Gardens Apartments	Casper	WY
8435263	Village Place	Bethany	MO

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000; telephone (202) 708–3856.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: 1408 Moultrie Avenue Group Home, Norfolk, VA, Project Number: 051–HD107/VA36–Q011–010.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: The project is economically designed, comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Toby House VIII, Phoenix, AZ, Project Number: 123–HD033/AZ20–Q011–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: The project is economically designed, comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Port Town Village, Urbanna, VA, Project Number: 051–EE091/VA36–S021–004.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 30, 2004.

Reason Waived: The project is economically designed and comparable in cost to other similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bethphage Housing VII, Kansas City, KS, Project Number: 084–HD041/KS16–Q021–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 30, 2004.

Reason Waived: Project is economically designed, comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Positively 3rd Street, New York, NY, Project Number: 012–EE287/NY36–S001–002.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 4, 2004.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: HH Ownership Condos, Nashua, NH, Project Number: 024–HD038/NH36–Q021–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 6, 2004.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Harvard Road Group Home, Waynesboro, VA, Project Number: 051–HD111/VA36–Q021–002.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 6, 2004.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Rochester Supportive Housing, Rochester, MN, Project Number: 092–HD057/MN46–Q021–002.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 25, 2004.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Albuquerque New Life Home 3, Albuquerque, NM, Project Number: 116–HD019/NM16–Q021–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 25, 2004.

Reason Waived: The project is economically designed, comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: On With Life Supportive Housing, Ankeny, IA, Project Number: 074–HD024/IA05–Q021–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 26, 2004.

Reason Waived: The project is economically designed, comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Options Supportive Housing VIII, Port Jefferson Station, NY, Project Number: 012–HD110/NY36–Q021–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 22, 2004.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. John's Manor, Glendale, AZ, Project Number: 123–EE079/AZ20–S011–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2004.

Reason Waived: The project is economically designed, comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Piney Ridge Apartments, Danville, VA, Project Number: 051–HD077/VA36–Q981–008.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2004.

Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street,

SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Minnehaha County Supportive Housing, Inc., Sioux Falls, SD, Project Number: 091–EE005/SD99–S011–001.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 24, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Family Services of Western Pennsylvania II, Apollo, PA, Project Number: 033–HD064/PA28–Q011–002.

Nature of Requirement: Section 89.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 2004.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Positively 3rd Street, New York, NY, Project Number: 012–EE287/NY36–S001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 4, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources. Additional time was needed to conduct an extensive cost review to assure that the project is cost effective.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Vinfen's Larchmont Residence, Dorchester, MA, Project Number: 023–HD166/MA06–Q001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources. Additional time was needed to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Balsam Lake Disabled Housing, Balsam Lake, WI, Project Number: 075–HD069/WI39–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 2, 2004.

Reason Waived: Additional time was needed to secure a site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Flury Place, Elkridge MD, Project Number: 052–HD034/MD06–Q981–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 7, 2004.

Reason Waived: Additional time was needed due to changes required by the county, in order to obtain a building permit, and for the general contractor to obtain subcontractor bids on the required changes.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space, Incorporated, Birmingham AL, Project Number: 062–HD041/AL09–Q981–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 7, 2004.

Reason Waived: Additional time was needed to reprocess the firm commitment application due to changes in the design of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Newell Retirement Apartments, San Antonio, TX, Project Number: 115–EE062/TX59–S011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 7, 2004.

Reason Waived: Additional time was needed to address requirements imposed by the City of San Antonio in order to comply with fire safety code issues as well as environmental issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ozone Park Residence, Ozone Park, NY, Project Number: 012–HD100/NY36–Q001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 9, 2004.

Reason Waived: Additional time was needed to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation: 24 CFR 891.165.*

Project/Activity: Skyline Apartments, Napa, CA, Project Number: 121–HD074/CA39–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 13, 2004.

Reason Waived: Additional time was needed to submit and review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Tierra del Sol, Cathedral City, CA, Project Number: 143–EE041/CA43–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 13, 2004.

Reason Waived: Additional time was needed to review and process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Theresa's House, Lynn, MA, Project Number: 023–EE133/MA06–S011–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 13, 2004.

Reason Waived: Additional time was needed for the Internal Revenue Service (IRS) to grant tax-exempt status to the owner.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Brighton Seniors, West Brighton, NY, Project Number: 014–EE206/NY06–S011–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: Additional time was needed to seek secondary financing, and to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cornhill Apartments, Rochester, NY, Project Number: 014–HD099/NY06–Q001–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: The project experienced delays resulting from the Phase II Environmental Site Assessment and acquisition of secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Eagle River Disabled Housing, Eagle River, WI, Project Number: 075–HD066/WI39–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: Additional time was needed for the sponsor to revise the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Brendan Senior Residences, Chicago, IL, Project Number: 071–EE159/IL06–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: Additional time was needed to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Riley House, Hyde Park, MA, Project Number: 023–EE111/MA06–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: Additional time was needed to submit and review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Francis Cabrini Gardens, Coram, NY, Project Number: 012–EE288/NY36–S001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 20, 2004.

Reason Waived: Additional time was needed to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Toby House VIII, Phoenix, AZ, Project Number: 123–HD033/AZ20–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 20, 2004.

Reason Waived: Additional time was needed to receive approvals from the City of Phoenix Council, and to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and

Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Luther Ridge, Middletown, CT, Project Number: 017–EE053/CT26–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 20, 2004.

Reason Waived: Additional time was needed to resolve issues associated with the condominium structure.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Daisy House, Rochester, NY, Project Number: 014–EE208/NY06–S011–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 20, 2004.

Reason Waived: Additional time was needed to submit and review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cabrini Senior Housing, New York, NY, Project Number: 012–EE307/NY36–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 23, 2004.

Reason Waived: Additional time was needed to obtain a building permit from the City of New York Department of Buildings.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hall Commons, Bridgeport, CT, Project Number: 017–EE063/CT26–S001–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 24, 2004.

Reason Waived: Additional time was needed due to the City of Bridgeport's delay in completing the environmental clean up. Additional time was also needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: PSCH Dewitt Residence, Brooklyn, NY, Project Number: 012–HD–102/NY36–Q001–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 30, 2004.

Reason Waived: Additional time was needed to secure an approvable site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ghost Creek Housing, River Falls, WI, Project Number: 075–HD067/WI39–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 2, 2004.

Reason Waived: Additional time was needed due to litigation, neighborhood opposition, and attempts to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Jubilee House, Wellesley, MA, Project Number: 023–HD159/MA06–Q991–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 11, 2004.

Reason Waived: Additional time was needed to submit the firm commitment Application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Westmoreland Apartments, Huntington, WV, Project Number: 045–EE017/WV15–S011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 11, 2004.

Reason Waived: Additional time was needed to review corrected initial closing documents and prepare for closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Family Services of Western Pennsylvania I, Sarver, PA, Project Number: 033–HD063/PA28–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 25, 2004.

Reason Waived: Additional time was needed to process the firm commitment application and to prepare the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Legion Woods Apartments, New Haven, CT, Project Number: 017–HD028/CT26–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 25, 2004.

Reason Waived: Additional time was needed for the sponsor to obtain additional funds from the state agency.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Family Services of Western Pennsylvania II, Apollo, PA, Project Number: 033–HD064/PA28–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 25, 2004.

Reason Waived: Additional time was needed to process the firm commitment application and to prepare the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Piney Ridge Apartments, Danville, VA, Project Number: 051–HD077/VA36–Q981–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 25, 2004.

Reason Waived: Additional time was granted because the sponsor had contributed substantial amounts of funding toward the development of the project, and additional funding would be available beginning July 1, 2004.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Royal Palm Apartments, Miami, FL, Project Number: 066–EE085/FL29–S011–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 4, 2004.

Reason Waived: Additional time was needed for the sponsor to locate an alternate site due to zoning issues, which in turn delayed finalization of the plans. Additional time was also needed to secure secondary financing from the Dade County Home Program.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: BCARC Homes IV, Inc., Palm Bay, FL, Project Number: 067–HD086/FL29–Q011–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2004.

Reason Waived: Additional time was needed for the sponsor to re-bid for a new general contractor, obtain a revised cost analysis, and prepare additional exhibits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Congress Street Apartments, New Port Richey, FL, Project Number: 067–HD077/FL29–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2004.

Reason Waived: Additional time was needed to seek funding from Pasco County.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pathways, Greenwich, CT, Project Number: 017–HD022/CT26–Q981–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 9, 2004.

Reason Waived: Additional time was needed to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Villa Regina, West Palm Beach, FL, Project Number: 066–EE086/FL29–S011–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 9, 2004.

Reason Waived: Additional time was needed to finalize plans and to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vinfen's Forest Residence, Weymouth, MA, Project Number: 023–HD176/MA06–Q011–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 2004.

Reason Waived: Additional time was needed to process the firm commitment application and initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Whalley House II, New Haven, CT, Project Number: 017–HD031/CT26–Q011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 20, 2004.

Reason Waived: Additional time was needed to complete revisions of specifications due to redesign of the project, and to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Psalm 23 Project, Ellenwood, GA, Project Number: 061–EE090/GA06–S991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18

months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 20, 2004.

Reason Waived: Additional time was needed to hire an experienced consultant, and to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Weir Landing, Yarmouth MA, Project Number: 023–HD173/MA06–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 20, 2004.

Reason Waived: Additional time was needed to change the scope of work required by HUD's architect, and to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Providence Center, Providence, RI, Project Number: 016–HD035/RI43–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 22, 2004.

Reason Waived: Additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vinfen's Plain Residence, Rockland, MA, Project Number: 023–HD175/MA06–Q011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2004.

Reason Waived: Additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Casa Dorada, Ponce, PR, Project Number: 056–EE044/RQ46–S011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2004.

Reason Waived: Additional time was needed for the sponsor to secure additional funds, and to resolve issues with local government officials.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Parque Platino, Lares, PR, Project Number: 056–EE043/RQ46–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2004.

Reason Waived: Additional time was needed for the sponsor to amend its corporate charter, as well as to apply for and obtain a separate IRS 501(c)(3) tax exemption.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: 703 Cedar Street Senior Housing, Garberville, CA, Project Number: 121–EE147/CA39–S011–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 25, 2004.

Reason Waived: Additional time was needed to finalize a cost with the contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cedars II, Lebanese Community Housing, Methuen, Massachusetts, Project Number: 023–EE109/MA06–S991–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exception up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 30, 2004.

Reason Waived: Additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Tongore Pines II, Olivebridge, NY, Project Number: 012–EE326/NY36S021–007.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax-exempt status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 9, 2004.

Reason Waived: The proposed Section 202 project is an extension of the sponsor's existing 202 project. The combining of the two projects will promote savings, since the residents can utilize the existing community room and reduced operating expenses.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Wingo Elderly Housing, Wingo, KY, Project Number: 082–EE066.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 16, 2004.

Reason Waived: The property owners have made every effort to market the project within the City of Wingo, and the

surrounding counties of Mayfield and Graves, including contacting various religious, social, and community organizations with no success.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Highview Unity Apartments, Charleston, WV, Project Number: 045–EE010.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 5, 2004.

Reason Waived: Despite aggressive marketing efforts to try to attract residents 62 years of age or older, the property has been able to get only 11 of 19 units occupied. This occupancy level is not able to sustain the property, and early mortgage default is certain.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Echo Valley Village, Pittsburgh, NH, Project Number: 024–EE040.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 2, 2004.

Reason Waived: The current occupancy level will not support the complex and early mortgage default is certain. Providing for a waiver of age and very-low income requirements will allow the owner additional flexibility in attempting to rent vacant units.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Harford Village, Harford, PA, Project Number: 034–EE075.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 2004.

Reason Waived: The current occupancy level will not support operations of the project. Providing flexibility of the very low income requirement will allow the owner to rent vacant units, and possibly start a waiting list.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* FY2003 SuperNOFA, Housing Counseling Program, 68 FR 21241 (NOFA).

Project/Activity: Credit Counseling Centers, Inc. of South Portland, Maine (CCCI), a HUD-approved local housing counseling agency (LHCA), applied for a comprehensive housing counseling grant under the FY2003 SuperNOFA competition, and was conditionally awarded a grant of $38,836. In October 2003, CCCI merged into Money Management International, Inc. (MMI), a nationwide, nonprofit credit counseling corporation headquartered in Houston, Texas. MMI will maintain a branch office in Portland, doing business in Maine under the name ''Consumer Credit Counseling Services of Maine, Inc. (CCCS).'' CCCI dissolved its board of directors and all assets have been transferred to MMI.

Nature of Requirement: Because CCCI no longer exists, the grant intended for this organization must be made in the name of MMI, whereby funds will be reserved for MMI. This change, however, requires the waiver of two NOFA requirements. MMI would not have been eligible to apply for this grant under the terms of the NOFA because it does not meet the definition of an LHCA. Further, MMI expects to receive a subgrant from the National Foundation for Credit Counseling (NFCC), a HUD-approved Intermediary Housing Counseling Organization. The NOFA prohibits LHCAs from receiving both a grant directly from HUD and a subgrant from a HUD-funded intermediary organization.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 10, 2004.

Reason Waived: The waiver is necessary to allow MMI, doing business as CCCS, to receive the grant conditionally awarded to CCI. Granting the requested waiver would prevent a disruption of housing counseling services to low- and moderate-income residents formerly served by CCCI.

Contact: Kitty M. Woodley, Office of Single Family Housing, Department of Housing and Urban Development 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3175.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 882.514(c).

Project/Activity: Salt Lake City Housing Authority (SCHA), Salt Lake City, UT. The SCHA requested a waiver of § 882.514(c) in order to allow Mod Rehab owners who are parties to housing assistance payments contracts with the SLCHA to advertise or solicit applications from low-income families after owners notify the SLCHA of vacancies.

Nature of Requirement: Section 882.514(c) allows owners of Mod Rehab projects to advertise or solicit applications from low-income families when a public housing agency (PHA) is unable to refer a sufficient number of families to the owner within 30 days of notification by the owner to the PHA of a vacancy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 26, 2004.

Reason Waived: The waiver to allow Mod Rehab owners to advertise and solicit applications upon notification by the owner of a vacancy without regard to the 30-day period was granted based on the high vacancy rate (over seven percent) in Mod Rehab properties and the SCHA's inability to maintain and refer a sufficient pool of interested applicants.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• Regulation: 24 CFR 902.33(c).

Project/Activity: Fairfield Housing Authority (AL010), Fairfield, AL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 30, 2004.

Reason Waived: The housing authority requested an extension of the due date for the purpose of resolving a prior Office of the Inspector General (OIG) audit finding before the independent public accountant (IPA) issues the audit report. The housing authority provided the OIG information with respect to the audit finding, and it will be forwarding the audited submission as soon as it receives a written response from the OIG clearing the finding.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• Regulation: 24 CFR 902.33(c).

Project/Activity: Waterloo Housing Authority (IA050), Waterloo, IA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 26, 2004.

Reason Waived: The housing authority requested an extension of the time to submit the audited financial submission. The housing authority, a component unit of the City of Waterloo, could not submit its audited financial because it is dependent on the city's completion of their annual audit. This issue has hindered the housing authority's ability to submit its audit report to the Real Estate Assessment Center (REAC) in a timely manner.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Durham Housing Authority (NC013), Durham, NC.

Nature of Requirement: Fairfield Housing Authority (AL010), Fairfield, AL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 12, 2004.

Reason Waived: The housing authority alleges an extension of the due date is needed because of an ongoing investigation by HUD's Office of Inspector General. The scope of the investigation has increased into other areas, which prompted the IPA to move the audit commencement date from November 17, 2003, to January 6, 2004.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Eunice Housing Authority (NM027), Eunice, NM.

Nature of Requirement: Fairfield Housing Authority (AL010), Fairfield, AL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 12, 2004.

Reason Waived: The housing authority advised that it would be unable to comply with the March 31, 2004, audited financial submission due date. The housing authority, a component unit of the City of Eunice, cannot submit its audited financial submission because it is dependent on the city's completion of their annual audit. This issue hindered the housing authority's ability to submit its audit report to the REAC in a timely manner.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Santa Clara Housing Authority (NM029), Santa Clara, NM.

Nature of Requirement: Fairfield Housing Authority (AL010), Fairfield, AL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 26, 2004.

Reason Waived: The housing authority requested an extension of time to submit the audited financial submission. The housing authority, a component unit of the Municipality of Santa Clara, could not submit its audited financial submission because it is dependent on the municipality for completion of their annual audit. This issue hindered the housing authority's ability to submit its audit report to the REAC in a timely manner.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Parma Housing Authority (OH073), Parma, OH.

Nature of Requirement: Fairfield Housing Authority (AL010), Fairfield, AL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 20, 2004.

Reason Waived: The housing authority is a component unit of the City of Parma, and the auditor for the State of Ohio has yet to release the city's audit. In addition, both the housing authority and the city have experienced key personnel changes.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Franklin County Housing Authority (PA034), Chambersburg, PA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 9, 2004.

Reason Waived: The housing authority advised that the auditor submitted Financial Assessment SubSystem (FASS) information in a timely manner, and it believed that the audited financial report had been successfully transmitted to the REAC as of December 19, 2003. However, the housing authority later learned that it received a late presumptive failure for not completing the last step in the submission process, which resulted in non-submission of the FASS data.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Paducah Housing Authority (TX084), Paducah, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 24, 2004.

Reason Waived: The housing authority advised that it did not include in its unaudited financial submission, two Rural Rental Housing programs managed by the housing authority, an error discovered during the annual audit. Consequently, the FASS invalidated the unaudited financial submission permitting the housing authority to submit a corrected submission to include these two programs. Knowing that it would not be able to meet the deadline date for the audited submission, the housing authority submitted a waiver request of the audited submission due date. The corrected unaudited submission was approved on

January 10, 2004, and the system automatically generated a late presumptive failure for the audited submission.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of the City of Diboll (TX229), Diboll, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 30, 2004.

Reason Waived: The housing authority requested an extension of the due date for the purpose of resolving a prior OIG audit finding before the IPA issues the audit report. The housing authority provided the OIG information with respect to the audit finding and has a meeting scheduled with the OIG on January 22, 2004. The housing authority will be forwarding the audited submission as soon as the OIG clears the finding.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Staunton Redevelopment & Housing Authority (VA023) Staunton, VA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end and audited financial statements are required no later than nine months after the PHA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 1, 2004.

Reason Waived: The housing authority advised that it was not able to meet the due date because the auditor did not notify the housing authority that the audit was ready for submission to FASS. The auditor commenced the audit on July 8, 2003. However, because the housing authority encountered difficulties imposed by the auditor during the audit, the audit was not completed until December 22, 2003. The final step to a three-step submission process was not performed and resulted in the housing authority receiving a late presumptive failure.

Contact: Judy Wojciechowski, Program Manager, Integrated Assessment System, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

• *Regulation:* 24 CFR 941.606 (n)(1)(ii)(B).

Project/Activity: Victoria Courts, Phase I (Refugio Street Apartments, on site), San Antonio, TX.

Nature of Requirement: This section requires that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development. The entity may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 4, 2004.

Reason Waived: The waiver was approved in order for Carleton Construction Company to complete Phase I of the Victoria Courts project. The San Antonio Housing Authority (SAHA) submitted an independent third-party cost estimate from FAS Construction Management, Inc. on December 5, 2003. Based on its review, FAS found the costs submitted by Carleton Construction Company to be reasonable and competitive for the San Antonio area for the type of construction proposed. The guaranteed maximum price bid offered by Carleton Construction Company is approximately four percent less than the cost estimate prepared by FAS. This satisfies HUD condition that the construction contract is less than or equal to the independent cost estimate.

Contact: Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 401–8812.

• *Regulation:* 24 CFR 982.401(f)(2)(i).

Project/Activity: Bristol Housing Authority, Bristol, CT. The Bristol Housing Authority (BHA) requested a waiver of the acceptability criteria addressing illumination and electricity found at 24 CFR 982.401(f)(2)(i) under HUD's Housing Quality Standards as a reasonable accommodation for a housing choice voucher participant with disabilities. BHA issued a voucher to a mentally challenged amputee, who found an accessible one-bedroom unit in a building with a wheelchair ramp and other amenities that accommodated his needs. However, the voucher holder moved into the unit prior to BHA conducting an inspection for housing quality compliance. BHA subsequently inspected the unit and determined that although the unit's bedroom and bathroom each contained a large window, the living room did not contain a window, which violated the HQS acceptability criteria that state that there must be at least one window in the living room and in each sleeping room. BHA determined that the large windows in the bedroom and the bathroom provided sufficient natural illumination for the entire unit. Furthermore, the landlord was unable to install a window in the living room area because the wall adjoins another unit. Additionally, BHA stated that it would be extremely difficult for Mr. Blais to find other housing in the area that meets his needs.

Nature of Requirement: Section 982.401(f)(2)(i) states that there must be at least one window in the living room and in each sleeping room of a dwelling unit.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 2, 2004.

Reason Waived: Approval of the waiver was granted due to the fact that the unit was determined to have sufficient illumination from its large bedroom and bathroom windows, had amenities that accommodated the voucher participant's disabilities, and other suitable housing was unavailable in the vicinity.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Mental Health Resources of Minneapolis, Minnesota. Mental Health Resources requested a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a disabled housing choice voucher program participant. This participant is developmentally disabled and had difficulty in finding available, affordable housing in the Minneapolis suburb of Maple Grove, where his three part-time jobs are located. Because of limited bus service in the area, commuting to his jobs from another location was not an option. After a lengthy search, this individual located a two-bedroom unit in Maple Grove near the house of his parents, who assist their son with some of his daily care needs.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing

Date Granted: January 27, 2004.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher participant to rent a two-bedroom unit that is near the home of his parents, who provide some of his daily care needs, and is in close proximity to his part-time jobs.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.628(a)(2).

Project/Activity: Housing Authority of the County of Clallam, Port Angeles, Washington. The Housing Authority of the County of Clallam requested a waiver in order to allow families participating in the homeownership option of the housing choice voucher program to purchase units in a new construction development in Port Angeles, Washington.

Nature of Requirement: Section 982.628(a)(2) requires that a unit eligible for purchase with homeownership voucher assistance must be either existing or under construction at the time the family enters into the contract of sale.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 13, 2004.

Reason Waived: The homeownership voucher regulations do not provide for the eligibility of units not yet under construction as a result of environmental review concerns. The project in question was developed under the United States Department of Agriculture's (USDA) Rural Housing Service Self-Help program. Under the Self-Help program, the family is required to work on the actual construction of its unit. The family must enter into a contract of sale prior to commencement of construction in order to secure a construction loan. The cost of housing in Clallam County had increased as much as 20 percent in the last six to nine months, and participation in the USDA sweat-equity program was the only hope that most of the voucher program participants had of becoming homeowners. In order to address the environmental concerns, the HUD Washington State Office completed an environmental review under the provisions of 24 CFR part 50 for the project. The HUD Washington State Office determined the project would have no significant impact on the environment and provided a recommendation for approval.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.3(a)(2).

Project/Activity: Housing Authority of Alameda County (HAAC), Hayward, CA. The HAAC requested a waiver of requirements regarding the availability of vouchers for project-based assistance so that it could enter into an agreement to enter into a housing assistance payments contract (AHAP) for 18 units at the Housing Alliance Project. In January 2004, the HAAC was 100 percent leased.

Nature of Requirement: Section 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project-based housing assistance payments (HAP) contract or otherwise committed, *e.g.*, vouchers issued to families searching for housing or units under an AHAP.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 8, 2004.

Reason Waived: The requirement to have vouchers available at the time of execution of an AHAP was waived since the HAAC reported that it had a turnover rate of no less than ten vouchers per month. The HAAC's attrition plan indicated that it intended to stop issuing turnover vouchers in the three months immediately preceding the date anticipated for HAP execution in April 2005 to ensure that vouchers would be available for the Housing Alliance Project and that over leasing would not occur.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.3(a)(2).

Project Activity: Owatonna Housing Authority (OHA), Owatonna, MN. The OHA requested a waiver of requirements regarding the availability of vouchers for project-based assistance so that it could enter into an agreement to enter into a housing assistance payments contract (AHAP) for four project-based voucher units at Willow Run II Town Houses.

Nature of Requirement: Section 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project-based housing assistance payments (HAP) contract or otherwise committed, *e.g.*, vouchers issued to families searching for housing or units under an AHAP.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing

Date Granted: March 18, 2004.

Reason Waived: The requirement to have vouchers available at the time of execution of an AHAP was waived since the OHA reported that it had a turnover rate of approximately two to four vouchers per month. The OHA's attrition plan indicated that the number of vouchers leased would drop to 104 (out of a baseline of 113) in October 2004 when Willow Run II Town Houses would be completed and a housing assistance payments contract executed.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.3(a)(2).

Project/Activity: Housing Authority of Alameda County (HAAC), Hayward, CA. The HAAC requested a waiver of requirements regarding the availability of vouchers for project-based assistance so that it could enter into an agreement to enter into a housing assistance payments contract (AHAP) for 40 project-based voucher units at the Bridgeway East Development.

Nature of Requirement: Section 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project-based housing assistance payments (HAP) contract or otherwise committed, *e.g.,* vouchers issued to families searching for housing or units under an AHAP.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 26, 2004.

Reason Waived: The requirement to have vouchers available at the time of execution of an AHAP was waived since the HAAC reported that it had a turnover rate of no less than 10 vouchers per month. There were 12 units that will have PBA attached at the Bridgeway East Development. To ensure that 40 vouchers will be available for this project, the HAAC intends to stop issuing vouchers that turnover in the four months immediately preceding the date anticipated for HAP execution in April 2005.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.3(a)(2).

Project/Activity: Boston Housing Authority (BHA), Boston, MA. The BHA requested a waiver of requirements regarding the availability of vouchers for project-based assistance so that it could enter into an agreement to enter into a housing assistance payments contract (AHAP) for project-based voucher units at the Imani House, Egleston Crossing, Harvard Commons, the Metropolitan, and Seton Manor.

Nature of Requirement: Section 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project based housing assistance payments (HAP) contract or otherwise committed, *e.g.,* vouchers issued to families searching for housing or units under an AHAP.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 29, 2004.

Reason Waived: The requirement to have vouchers available at the time of execution of an AHAP was waived since the BHA has developed a comprehensive attrition plan to bring its program-leasing rate back in line with its baseline units. This plan includes the addition of 555 new units to the BHA's baseline unit allocation obtained as a result of public housing demolition, HOPE VI activities and a voluntary compliance agreement entered into between the BHA and HUD. The BHA's 2005 fiscal year began on April 1, 2004, and through the combination of attrition, acquisition of new units and the BHA's contribution of financial resources, the BHA anticipates that its leasing rate will be in line with its total number of allocated baseline units by the end of its 2005 fiscal year.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b), (c).

Project/Activity: Housing Authority of the City of Rock Hill (HACR), Rock Hill, SC. The HACR requested a waiver of competitive selection of owner proposals to permit it to attach project-based assistance (PBA) to Highland Park Mill.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 2, 2004.

Reason Waived: Approval to waive competitive selection was granted for Highland Park Mill since the project underwent a competitive process and was awarded tax-exempt bonds and low income housing tax credits through the South Carolina Finance Agency.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51.

Project/Activity: Sacramento Housing and Redevelopment Agency (SHRA), Sacramento, CA. The SHRA requested a waiver of competitive selection of owner proposals under the project-based program for the Phoenix Park project.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 1, 2004.

Reason Waived: Approval to waive competitive selection was granted for the Phoenix Park project since the project had undergone three federal competitions. The project was awarded $25.83 million in federal low income housing tax credits and the project was awarded funds by the City of Sacramento under the federal HOME and Community Development Block Grant programs.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51.

Project Activity: Delaware County Housing Authority (DCHA), Delaware County, PA. The DCHA requested a waiver of competitive selection of owner proposals under the project-based program for the Upland Terrace project.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 8, 2004.

Reason Waived: Approval to waive competitive selection was granted for the Upland Terrace project since the project had undergone a previous competition under the federal low income housing tax credit program.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project Activity: Lycoming Co., PA, Housing Authority. A request was made to permit the Authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR 990.107 and 990.109, Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Lycoming Co. Housing Authority has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 2, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the housing authority presented a sound and reasonable methodology for doing so. The Lycoming Co. Housing Authority requested a waiver based on the same approved methodology. The waiver permits the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, ATTN: Peggy Mangum, Public Housing Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Paducah, GA, Housing Authority. A request was made to permit the housing authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR 990.107 and 990.109, an Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Paducah Housing Authority has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 20, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the housing authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the housing authority presented a sound and reasonable methodology for doing so. The Paducah Housing Authority requested a waiver based on the same approved methodology. The waiver permits the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, ATTN: Peggy Mangum, Public Housing Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: City of Fort Myers, FL, Housing Authority. The authority made a request was made to permit it benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR 990.107 and 990.109, an rating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The City of Ft. Myers Housing Authority has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 3, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the housing authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the housing authority presented a sound and reasonable methodology for doing so. The City of Ft. Myers Housing Authority requested a waiver based on the same approved methodology. The waiver permits the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, ATTN: Peggy Mangum, Public Housing Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 1280 Maryland Avenue,

SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932.

• *Regulation:* 24 CFR 1000.214.

Project/Activity: The Village of Allakaket's submission of an Indian Housing Plan (IHP) for Fiscal Year (FY) 2004 funding made available under the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996.

Nature of Requirement: Section 1000.214 establishes a July 1st deadline for the submission of an IHP.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 12, 2004.

Reason Waived: The Allakaket Village Council had made several attempts to submit an IHP that was in compliance with Section 102 of NAHASDA; however, the Village lost its administrator/IHP writer. The Village voted on November 18, 2003, to designate the Interior Regional Housing Authority (IRHA) as the tribally designated housing entity (TDHE) for FY2004, so that the Village could receive much needed funding for affordable housing activities and the grant could be administered by an entity with administrative capacity.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone (303) 675–1625.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Minneapolis Public Housing Agency (MPHA), Minneapolis, MN. The MPHA requested an exception to the initial guidance since the St. Barnabas project is located in census tract 1054 that has a poverty rate of 40.1 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 2, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project is located two blocks north of the Minneapolis Empowerment Zone. The purpose of an Empowerment Zone is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans and since the project is immediately outside the Empowerment Zone the project should also derive benefits from the Empowerment Zone. The goals of an Empowerment Zone are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Rochester Housing Agency (RHA), Rochester, NY. The RHA requested an exception to the initial guidance since Wilson Commencement Park Phase II is located in a census tract with a poverty rate of 42.6 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing

Date Granted: January 27, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project is located at 225 Joseph Avenue, which is in the City of Rochester's Renewal Community. The purpose of establishing renewal communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. These goals are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Chicago Housing Authority (CHA), Chicago, IL. The CHA requested an exception to the initial guidance since Wentworth Commons is located in a census tract with a poverty rate of 28 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 27, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since Wentworth Commons is located near the Michigan Avenue business corridor that has been slated for redevelopment and the vacant land adjacent to the project will be developed by the Roseland Community Hospital. The hospital intends to invest $5.3 million to expand its emergency room facility with the potential to create 25 limited construction jobs, 75 new full-time jobs and the retention of 550 existing jobs. A Roseland Professional Center for doctors' offices, retail shops, a restaurant and other professional offices is also planned for the vacant land adjacent to the project and will create 75 new and 25 temporary construction jobs. The economic development activities and significant job creation are consistent with the goals of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA. The HANO requested an exception to the initial guidance for 100 scattered site units located in census tracts with a poverty rate greater than 20 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 31, 2004.

Reason Waived: Approval of the exception for deconcentration was granted for 53 scattered site units. The exception was granted since the census tracts within which the units are located have undergone or will undergo major revitalization as a result of two HOPE VI grants awarded to HANO. Non-federal funds have been invested in the areas including the development of a Wal-Mart superstore that will create over 500 jobs. Many of the units are located in census tracts where the density of public housing units has been significantly reduced as a result of the HOPE VI projects.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: St. Paul Public Housing Agency (SPPHA), St. Paul, MN. The SPPH requested an exception to the initial guidance since Crestview Community Expansion is located in a census tract with a poverty rate of 23 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 17, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the

entire project consisting of three buildings is located within one block of the HUD-designated St. Paul Enterprise Zone and should derive its benefits. The purpose of establishing enterprise zones is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. In addition, from 1989 to 1999 poverty measured by household decreased from 18.1 percent to 13.1 percent in census tract 309; the percentage of households having wage or salary income increased from 74.4 percent to 87.1 percent; and median household income increased by 72 percent. The goals of an enterprise zone are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities, and the change in the economic indicators in the census tract over a ten-year period demonstrates improvement.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Minneapolis Public Housing Agency (MPHA), Minneapolis, MN. The MPHA requested an exception to the initial guidance to permit it to attach PBA to the Archdale and St. Barnabas projects.

Nature of Requirement: Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters is authorizing implementation of this aspect of the law on a case-by-case basis.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 17, 2004.

Reason Waived: Approval to waive the 25 percent cap on the number of units in a building that can have PBA attached was granted for the Archdale and St. Barnabas since Central Community Housing Trust will provide supportive services for families living there through a living skills program. Each client will be assigned an independent living skills counselor who will develop an individualized service plan. The program will focus on maintaining employment, developing budgeting skills, achieving educational goals,and developing self-discipline with regard to maintaining an apartment, nutritional habits, and physical and emotional health. There will be an on-site independent living skills program at St. Barnabas. This program will assist residents in meeting productivity goals of either school or work, in learning skills to maintain housing, and in addressing any personal or family issues that might impact self-sufficiency. The services at both projects are consistent with the statute.

Contact: Gerald Benoit, Director, Housing Vouchers Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA. The HANO requested an exception to the initial guidance for 100 scattered site units located in census tracts with a poverty rate greater than 20 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 20, 2004.

Reason Waived: Approval of the exception for deconcentration was granted for 22 scattered site units since the census tracts within which the units are located have undergone or will undergo major revitalization as a result two HOPE VI grants awarded to HANO. Non-federal funds have been invested in the areas including the development of a Wal-Mart Superstore that potentially will create over 500 jobs. Many of the units are located in census tracts where the density of public housing units has been significantly reduced as a result of the HOPE VI projects. Additionally, many of the areas have undergone significant economic development resulting in the creation of hundreds of jobs.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Boston Housing Authority (BHA), Boston, MA. The BHA requested an exception to the initial guidance for the Amory Place project that is located in a census tract with a poverty rate greater than 20 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 24, 2004.

Reason Waived: Approval of the exception for deconcentration was granted because the Amory Street project is located within Boston's HUD designated Empowerment Zone. The purpose of establishing Empowerment Zones (EZs) and Enterprise Communities (ECs) is to open new businesses, create jobs, housing, and new educational and healthcare opportunities for Americans living in distressed areas. Millions of dollars have been invested in this neighborhood to expand homeownership opportunities and increase commercial and economic opportunities. New businesses have been established that will ultimately aid in the deconcentration of poverty by creating additional jobs.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Rochester Housing Authority (RHA), Rochester, NY. The RHA requested an exception to the initial guidance since Olean-Kennedy Town Homes is located in a census tract with a poverty rate of 39.6 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 1, 2004.

Reason Waived: Approval of the exception for deconcentration was granted for Olean-Kennedy Town Homes since all of the units are located on streets (Doran, Olean and Edith) that are in the City of Rochester's HUD-designated Renewal Community. The purpose of establishing renewal communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. In addition, there will be an overall reduction in assisted units from 111 to 67 due to the demolishment of Kennedy Townhouses and Olean Townhouses. A reduction in assisted units and the goals of a renewal community are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Rochester Housing Authority (RHA), Rochester, NY. The RHA requested an exception to the initial guidance

since Catholic Family Center is located in a census tract with a poverty rate of 34.4 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, a project must be in a census tract with a poverty rate of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 8, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the Catholic Family Center is in the City of Rochester's Renewal Community. The purpose of establishing renewal communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. These goals are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: St. Paul Public Housing Authority (SPPHA), St. Paul, MN. The SPPHA requested an exception to the initial guidance since Model Cities III is located in a census tract with a poverty rate of 30 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 8, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since Model Cities III is located in a HUD-designated Enterprise Community, the purpose of which is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. These goals are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. In addition, the median household income of the census tract increased from $20,993 in 1989 to $32,932 in 1999. This increase of 57 percent was greater than the 46 percent increase for the City of St. Paul as a whole.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Metropolitan Council Housing and Redevelopment Authority (MCHRA), St. Paul, MN. The MCHRA requested an exception to the initial guidance to permit it to attach PBA to East Metro Place III.

Nature of Requirement: Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters is authorizing implementation of this aspect of the law on a case-by-case basis.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 12, 2004.

Reason Waived: Approval to waive the 25 percent cap on the number of units in a building that can have PBA attached was granted for East Metro Place II since families that will occupy ten of the 14 new units will participate in the Metro HRA's FSS program through a FSS Contract of Participation, with the supportive services and case management provided by East Metro Women's Council. Since 20 of the 34 units in the building already had PBA attached, the waiver applied to only those ten units where families will receive supportive services through the Metro HRA's FSS program.

Contact: Gerald Benoit, Director, Housing Vouchers Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Rochester Housing Authority (RHA), Rochester, NY. The RHA requested an exception to the initial guidance to permit it to attach PBA to Wilson Commencement Park Phase II.

Nature of Requirement: Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA, except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters is approving implementation of this aspect of the law on a case-by-case basis.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 24, 2004.

Reason Waived: Approval to waive the 25 percent cap on the number of units in a building that can have PBA attached was granted for Wilson Commencement Park II since the RHA confirmed through an executed agreement with Wilson Commencement Park that families living in the project would participate in its Family Self-Sufficiency program.

Contact: Gerald Benoit, Director, Housing Vouchers Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: New York City Housing Authority (NYCHA), New York, NY. The NYCHA requested an exception to the initial guidance since RAIN Apartments is located in a census tract with a poverty rate of 28 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 26, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project is located in the Bronx Overall Economic Development Corporation service area that operates the Bronx Empowerment Zone. It is also in a New York city-designated HUD Community Development Block Grant (CDBG) Target Area. Public investment in the project includes $3.7 million in the city's capital funds to build the RAIN Gun Hill Senior Center that will be located on the ground floor and partial cellar of the building. CDBG funds have been allocated to support a Neighborhood Commercial Revitalization program. Investment will be used to support commercial revitalization initiatives to promote the economic viability of the neighborhood retail areas and preserve the area. With the construction cost of almost $11 million, the housing and community center will create approximately 75 jobs including at least six permanent positions at the site. The public investment and economic opportunities related to this project are consistent with the goals of deconcentration.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance and 24 CFR 982.207(b)(3).

Project/Activity: Boston Housing Authority (BHA), Boston, MA. The BHA requested an exception to the initial guidance for the Columbia West project that is located in a census tract with a poverty rate greater than 20 percent. Additionally, the BHA requested

a waiver of the selection preference regulation to select persons with persistent mental disabilities to receive project-based voucher assistance at the Columbia West project.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section 982.207(b)(3) which governs tenant selection under the project-based voucher program, states that a housing agency may adopt a preference for admission of families that include a person with disabilities, but may not adopt a preference for a person with a specific disability.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 26, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project is located in an area where the state's Department of Neighborhood Development (DND) is investing a substantial amount of public dollars, as well as providing assistance to first-time homebuyers, and local businesses. Additionally, the area in which the Columbia West project will be located is in a mixed-income area where a 12-unit homeownership development is being constructed. The BHA provided detailed information supporting the fact that this project is part of the city's revitalization efforts. A waiver of 983.207(b)(3) was granted since the selection preference would be limited to the population of homeless individuals with disabilities that have significantly interfered with their ability to obtain and maintain themselves in housing, and who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing, and for whom such services cannot be provided in a non-segregated setting. This waiver applied to, but was not limited to, persons with severe and persistent mental illnesses.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance and Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Connecticut Department of Social Services (CDSS), Hartford, CT. The CDSS requested an exception to the initial guidance for the Sorromundi Commons project that is located in a census tract with a poverty rate greater than 20 percent. Additionally, the DSS requested an exception to the initial guidance to permit it to attach PBA to more than 25 percent of the units in the building.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section II subpart F requires that no more than 25 percent of the dwelling units in any building can be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters is authorizing implementation of this aspect of the law on a case-by-case basis.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 30, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since many projects are underway in the area in which Soromundi commons is located. A new convention center, hotel, and civic center are among the projects that will create jobs for residents of Soromundi Commons. The public financial commitment for these three projects totals over $235 million. In addition, the development of a community college is underway. The community college will give the residents of Soromundi Commons the opportunity to increase their earning potential by enrolling in and completing higher education courses. Finally, the area in which Soromundi Commons is located has been targeted by the State of Connecticut as a revitalization area. Approval to waive the 25 percent cap on the number of units in a building that can have PBA attached was granted for the Soromundi Commons project since the scope of the supportive services included counseling and direct linkage to education classes, training activities in financial management, and employment and educational support services.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 2002 ROSS NOFA, Section III F(2)(c) Program, Description, Eligible Applicants Eligible Activities.

Project/Activity: Jacksonville Housing Authority, ROSS Grant No. FL02RHS001P0011.

Nature of Requirement: Waiver of the 2002 ROSS NOFA to extend ROSS Homeownership Supportive Services training to residents of other public housing communities, which were not included in the grantee's original proposal.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 20, 2004.

Reason Waived: The HUD field office explained that the Jacksonville Housing Authority would not be servicing enough residents with its ROSS Homeownership Supportive Services grant if it were limited to serving only public housing developments included in its original proposal.

Contact: Dina Lehmann-Kim, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4932.

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Federal Register

Thursday,
October 28, 2004

Part IV

Department of Labor

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 2005.

EFFECTIVE DATE: The annual list of labor surplus areas is effective October 1, 2004 for all states.

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, Acting Division Chief, U.S. Employment Service, Employment and Training Administration, 200 Constitution Avenue, NW., Room C 4512, Washington, DC 20210. Telephone: (202) 693–2784.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. These regulations require the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas. In addition, the regulations provide an exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Dated: October 22, 2004.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Eligible Labor Surplus Areas

Procedures for Classifying Labor Surplus Areas

Labor surplus areas are classified on the basis of civil jurisdictions rather than on a metropolitan area or labor market area basis under the basic labor surplus area program procedures. Civil jurisdictions are defined as all cities with a population of at least 25,000 and all counties. Townships with a population of 25,000 or more are also considered as civil jurisdictions in 4 states (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico, and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

A civil jurisdiction is classified as a labor surplus area when its average unemployment rate was at least 20 percent above the average unemployment rate for all states (including the District of Columbia and Puerto Rico) during the previous 2 calendar years. During periods of high national unemployment, the 20 percent ratio is disregarded and an area is classified as a labor surplus area if its unemployment rate during the previous 2 calendar years was 10 percent or more. This 10 percent ceiling concept comes into operation whenever the 2-year average unemployment rate for all states was 8.3 percent or above (*i.e.*, 8.3 percent times the 1.20 ratio equals 10.0 percent). Similarly, a ''floor'' concept of 6.0 percent is used during periods of low national unemployment in order for an area to qualify as a labor surplus area. The 6 percent ''floor'' comes into effect whenever the average unemployment rate for all states during the 2-year reference period was 5.0 percent or less.

The Department of Labor issues the labor surplus area list on a fiscal year basis. The list becomes effective each October 1 and remains in effect through the following September 30. During the course of the fiscal year, the annual list is updated on the basis of exceptional circumstances petitions submitted by state workforce agencies and approved by the Employment and Training Administration. The reference period used in preparing the current list was January 2002 through December 2003. The national average unemployment rate during this period (including data for Puerto Rico) was 5.9 percent. After applying the 1.2 ratio, the threshold for FY 2005 is 7.1 percent. Therefore, areas are included on the current annual labor surplus area list because their average unemployment rate during the reference period was 7.1 percent or above.

Petition for Exceptional Circumstances Consideration

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not adequately reflected in the data for the 2-year reference period. Under the program's exceptional circumstance procedures, labor surplus area classifications can be made on the basis of civil jurisdictions, Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the state workforce agency must submit a petition requesting such classification to the Department of Labor's Employment and Training Administration. The current conditions for exceptional circumstances classification are: An area unemployment rate of at least 7.1 percent for each of the three most recent months; projected unemployment rate of at least 7.1 for each of the next 12 months; and documented information that the exceptional circumstance event has already occurred. The state workforce agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget. The addresses of state workforce agencies are available on the LSA section of the ETA Web site *http://www.uses.doleta.gov/lsa.asp.* State workforce agencies should submit petitions, in electronic format, to *dais.anthony@dol.gov* or in hard copy to the ETA National Office, Office of Workforce Investment, U.S. Employment Service, 200 Constitution Ave., NW., Room S4231, Washington, DC 20210. Data collection for the petition is approved under OMB 1205–0207.

State Workforce Agencies

Alabama Department of Industrial Relations, 649 Monroe St., Montgomery 36130.

Alaska Department of Labor & Workforce Development, P.O. Box 21149, Juneau 99802.

Arizona Arizona Department of Economic Security, P.O. Box 6123, Phoenix 85005.

Arkansas Employment Security Department, P.O. Box 2981, Little Rock 72203–2981.

California Employment Development Department, 800 Capitol Mall, Sacramento 95814.

Colorado Department of Labor and Employment, 1515 Arapahoe Street, Denver 80202–2117.

Connecticut Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield 06109–1114.

Delaware Delaware Department of Labor, Division of Employment & Training, 4425 North Market Street, Wilmington 19802.

District of Columbia Department of Employment Services, 64 New York Avenue NE., Washington 20002.

Florida Agency for Workforce Innovation, Caldwell Building, 107 E.

Madison Street, Tallahassee 32399–4120.
Georgia Georgia Department of Labor, 148 Andrew Young International Boulevard NE., Atlanta 30303.
Guam Department of Labor, Government of Guam, P.O. Box 23548 GMF, Agana 96921.
Hawaii Department of Labor and Industrial Relations, 830 Punchbowl St., Honolulu 96813.
Idaho Department of Labor, 317 W. Main Street, Boise 83735.
Illinois Department of Employment Security, 33 S. State Street, Chicago 60602–2802.
Indiana Department of Workforce Development, 10 North Senate Avenue, Indianapolis 46204–2277.
Iowa Iowa Workforce Development, 1000 Grand Avenue, Des Moines 50319.
Kansas Kansas Department of Labor, 401 SW. Topeka Avenue, Topeka 66603–3182.
Kentucky Department of Workforce Investment, 275 East Main Street, Frankfort 40621.
Louisiana Department of Labor, P.O. Box 94094, Baton Rouge 70804–9094.
Maine Department of Labor, 20 Union Street, Augusta 04332–0309.
Maryland Department of Labor, Licensing and Regulation, 1100 N. Eutaw St., Baltimore 21201.
Massachusetts Division of Career Services, 19 Staniford Street, Boston, 02114.
Michigan Department of Labor & Economic Growth, Victor Office Center, 201 N. Washington Square, Lansing 48913.
Minnesota Department of Employment & Economic Development, 390 North Robert Street, St. Paul 55101.
Mississippi Employment Security Commission, 1520 W. Capital St., P.O. Box 1699, Jackson 39215–1699.
Missouri Division of Workforce Development, P.O. Box 1087, Jefferson City 65102–1087.
Montana Department of Labor and Industry, P.O. Box 1728, Helena 59624.
Nebraska Department of Labor, Div of Employment, 550 South 16th Street, Lincoln 68509.
Nevada Nevada Department of Employment, Training and Rehabilitation, 500 E. Third Street, Carson City 89713.
New Hampshire Department of Employment Security, 32 S. Main Street, Concord 03301–4857.
New Jersey Department of Labor and Workforce Development, P.O. Box 110, Trenton 08625.
New Mexico Department of Labor, 401 Broadway, NE., P.O. Box 1928, Albuquerque 87103.
New York Department of Labor, State Campus, Building 12, Albany 12240.
North Carolina Employment Security Commission of North Carolina, P.O. Box 25903, Raleigh 27611.
North Dakota Job Service North Dakota, 1000 E. Divide Ave., P.O. Box 5507, Bismarck, 58506–5507.
Ohio Department of Jobs and Family Services, 30 E. Broad Street, Columbus 43215.
Oklahoma Employment Security Commission, 2401 North Lincoln, Will Rogers Memorial Office Building, Oklahoma City 73105.
Oregon Employment Department, Dept of Human Resources, 875 Union St., NE., Salem 97311.
Pennsylvania Department of Labor & Industry, 1720 Labor & Industry Bldg., Harrisburg 17121.
Puerto Rico Department of Labor and Human Resources Right To Employment Administration, 505 Munoz Rivera Avenue, Hato Rey 00936–4452.
Rhode Island Department of Labor & Training, 1511 Pontiac Avenue, Cranston 02920–4407.
South Carolina Employment Security Commission, Department of Employment and Training, P.O. Box 995, Columbia 29202.
South Dakota Department of Labor, 700 Governors Drive, Pierre 57501–2277.
Tennessee Department of Labor & Workforce Development, Division of Employment Security, 500 James Robertson Parkway 12th Floor, Davy Crockett Tower, Nashville 37245–1700.
Texas Texas Workforce Commission, 101 East 15th Street 440T, Austin 78778.
Utah Department of Workforce Services, 140 East 300 South, PO Box 45249, Salt Lake City 84145–0249.
Vermont Department of Employment & Training, P.O. Box 488, 5 Green Mountain Drive, Montpelier 05601–0488.
Virgin Islands Department of Labor, 53A & 54B Kronprindsen Gade, Charlotte Amalie 00802.
Virginia Virginia Employment Commission, 703 East Main Street, Richmond 23219.
Washington Employment Security Department, P.O. Box 9046, Olympia 98507–9046.
West Virginia Bureau of Employment Programs, 112 California Ave., Charleston 25305–0112.
Wisconsin Department of Workforce Development, 201 East Washington Avenue, Room 400X, Madison 53707.
Wyoming Department of Employment, 1510 East Pershing Boulevard, Cheyenne 82002.

LABOR SURPLUS AREAS

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA:	
ANNISTON CITY	ANNISTON CITY IN CALHOUN COUNTY.
BESSEMER CITY	BESSEMER CITY IN JEFFERSON COUNTY.
BIBB COUNTY	BIBB COUNTY.
BULLOCK COUNTY	BULLOCK COUNTY.
BUTLER COUNTY	BUTLER COUNTY.
CHAMBERS COUNTY	CHAMBERS COUNTY.
CHOCTAW COUNTY	CHOCTAW COUNTY.
CLARKE COUNTY	CLARKE COUNTY.
COLBERT COUNTY	COLBERT COUNTY.
CONECUH COUNTY	CONECUH COUNTY.
COOSA COUNTY	COOSA COUNTY.
CRENSHAW COUNTY	CRENSHAW COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
DECATUR CITY	DECATUR CITY IN LIMESTONE COUNTY, MORGAN COUNTY.
ESCAMBIA COUNTY	ESCAMBIA COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
FLORENCE CITY	FLORENCE CITY IN LAUDERDALE COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
GADSDEN CITY	GADSDEN CITY IN ETOWAH COUNTY.
GREENE COUNTY	GREENE COUNTY.
HALE COUNTY	HALE COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LAMAR COUNTY	LAMAR COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LOWNDES COUNTY	LOWNDES COUNTY.
MARION COUNTY	MARION COUNTY.
MOBILE CITY	MOBILE CITY IN MOBILE COUNTY.
MONROE COUNTY	MONROE COUNTY.
PERRY COUNTY	PERRY COUNTY.
PHENIX CITY	PHENIX CITY IN LEE COUNTY, RUSSELL COUNTY.
PICKENS COUNTY	PICKENS COUNTY.
PRICHARD CITY	PRICHARD CITY IN MOBILE COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
BALANCE OF RUSSELL COUNTY	RUSSELL COUNTY LESS PHENIX CITY.
SUMTER COUNTY	SUMTER COUNTY.
TALLADEGA COUNTY	TALLADEGA COUNTY.
TALLAPOOSA COUNTY	TALLAPOOSA COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WILCOX COUNTY	WILCOX COUNTY.
WINSTON COUNTY	WINSTON COUNTY.
ALASKA:	
ALEUTIAN ISLAND WEST CENSUS AREA	ALEUTIAN ISLAND WEST CENSUS AREA.
BETHEL CENSUS AREA	BETHEL CENSUS AREA.
BRISTOL BAY BOROUGH DIV	BRISTOL BAY BOROUGH DIV.
DENALI BOROUGH	DENALI BOROUGH.
DILLINGHAM CENSUS AREA	DILLINGHAM CENSUS AREA.
FAIRBANKS CITY	FAIRBANKS CITY IN FAIRBANKS NORTH STAR BOROUGH.
HAINES BOROUGH	HAINES BOROUGH.
KENAI PENINSULA BOROUGH	KENAI PENINSULA BOROUGH.
KETCHIKAN GATEWAY BOROUGH	KETCHIKAN GATEWAY BOROUGH.
KODIAK ISLAND BOROUGH	KODIAK ISLAND BOROUGH.
LAKE AND PENINSULA BOROUGH	LAKE AND PENINSULA BOROUGH.
MATANUSKA-SUSITNA BOROUGH	MATANUSKA-SUSITNA BOROUGH.
NOME CENSUS AREA	NOME CENSUS AREA.
NORTH SLOPE BOROUGH	NORTH SLOPE BOROUGH.
NORTHWEST ARCTIC BOROUGH	NORTHWEST ARCTIC BOROUGH.
PRINCE OF WALES OUTER KETCHIKAN	PRINCE OF WALES OUTER KETCHIKAN.
SKAGWAY-HOONAH-ANGOON CEN AREA	SKAGWAY-HOONAH-ANGOON CEN AREA.
SOUTHEAST FAIRBANKS CENSUS AREA	SOUTHEAST FAIRBANKS CENSUS AREA.
VALDEZ CORDOVA CENSUS AREA	VALDEZ CORDOVA CENSUS AREA.
WADE HAMPTON CENSUS AREA	WADE HAMPTON CENSUS AREA.
WRANGELL-PETERSBURG CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA.
YAKUTAT BOROUGH	YAKUTAT BOROUGH.
YUKON-KOYUKUK CENSUS AREA	YUKON-KOYUKUK CENSUS AREA.
ARIZONA:	
APACHE COUNTY	APACHE COUNTY.
AVONDALE CITY	AVONDALE CITY IN MARICOPA COUNTY.
BALANCE OF COCONINO COUNTY	COCONINO COUNTY LESS FLAGSTAFF CITY.
GILA COUNTY	GILA COUNTY.
GRAHAM COUNTY	GRAHAM COUNTY.
GREENLEE COUNTY	GREENLEE COUNTY.
BALANCE OF MARICOPA COUNTY	MARICOPA COUNTY LESS APACHE JUNCTION, AVONDALE CITY, CHANDLER CITY, GILBERT TOWN, GLENDALE CITY, GOODYEAR CITY, MESA CITY, PEORIA CITY, PHOENIX CITY, SCOTTSDALE CITY, SURPRISE CITY, TEMPE CITY.
NAVAJO COUNTY	NAVAJO COUNTY.
BALANCE OF PINAL COUNTY	PINAL COUNTY LESS APACHE JUNCTION, CASA GRANDE CITY.
SANTA CRUZ COUNTY	SANTA CRUZ COUNTY.
SURPRISE CITY	SURPRISE CITY IN MARICOPA COUNTY.
YUMA CITY	YUMA CITY IN YUMA COUNTY.
BALANCE OF YUMA COUNTY	YUMA COUNTY LESS YUMA CITY.
ARKANSAS:	
ASHLEY COUNTY	ASHLEY COUNTY.
BRADLEY COUNTY	BRADLEY COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CHICOT COUNTY	CHICOT COUNTY.
CLAY COUNTY	CLAY COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
BALANCE OF CRITTENDEN COUNTY	CRITTENDEN COUNTY LESS WEST MEMPHIS CITY.
CROSS COUNTY	CROSS COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
DESHA COUNTY	DESHA COUNTY.
DREW COUNTY	DREW COUNTY.
FULTON COUNTY	FULTON COUNTY.
HOT SPRING COUNTY	HOT SPRING COUNTY.
HOT SPRINGS CITY	HOT SPRINGS CITY IN GARLAND COUNTY.
IZARD COUNTY	IZARD COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
JACKSONVILLE CITY	JACKSONVILLE CITY IN PULASKI COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LEE COUNTY	LEE COUNTY.
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY.
MONROE COUNTY	MONROE COUNTY.
OUACHITA COUNTY	OUACHITA COUNTY.
PERRY COUNTY	PERRY COUNTY.
PHILLIPS COUNTY	PHILLIPS COUNTY.
PINE BLUFF CITY	PINE BLUFF CITY IN JEFFERSON COUNTY.
POINSETT COUNTY	POINSETT COUNTY.
POLK COUNTY	POLK COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
SHARP COUNTY	SHARP COUNTY.
ST. FRANCIS COUNTY	ST. FRANCIS COUNTY.
UNION COUNTY	UNION COUNTY.
VAN BUREN COUNTY	VAN BUREN COUNTY.
WOODRUFF COUNTY	WOODRUFF COUNTY.
CALIFORNIA:	
ALPINE COUNTY	ALPINE COUNTY.
ANTIOCH CITY	ANTIOCH CITY IN CONTRA COSTA COUNTY.
AZUSA CITY	AZUSA CITY IN LOS ANGELES COUNTY.
BAKERSFIELD CITY	BAKERSFIELD CITY IN KERN COUNTY.
BALDWIN PARK CITY	BALDWIN PARK CITY IN LOS ANGELES COUNTY.
BANNING CITY	BANNING CITY IN RIVERSIDE COUNTY.
BELL CITY	BELL CITY IN LOS ANGELES COUNTY.
BELL GARDENS CITY	BELL GARDENS CITY IN LOS ANGELES COUNTY.
BRENTWOOD CITY	BRENTWOOD CITY IN CONTRA COSTA COUNTY.
BALANCE OF BUTTE COUNTY	BUTTE COUNTY LESS CHICO CITY, PARADISE CITY.
CALAVERAS COUNTY	CALAVERAS COUNTY.
CALEXICO CITY	CALEXICO CITY IN IMPERIAL COUNTY.
CERES CITY	CERES CITY IN STANISLAUS COUNTY.
CHICO CITY	CHICO CITY IN BUTTE COUNTY.
CLOVIS CITY	CLOVIS CITY IN FRESNO COUNTY.
COACHELLA CITY	COACHELLA CITY IN RIVERSIDE COUNTY.
COLTON CITY	COLTON CITY IN SAN BERNARDINO COUNTY.
COLUSA COUNTY	COLUSA COUNTY.
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY.
CUDAHY CITY	CUDAHY CITY IN LOS ANGELES COUNTY.
DEL NORTE COUNTY	DEL NORTE COUNTY.
DELANO CITY	DELANO CITY IN KERN COUNTY.
EAST PALO ALTO CITY	EAST PALO ALTO CITY IN SAN MATEO COUNTY.
EL CENTRO CITY	EL CENTRO CITY IN IMPERIAL COUNTY.
EL MONTE CITY	EL MONTE CITY IN LOS ANGELES COUNTY.
FRESNO CITY	FRESNO CITY IN FRESNO COUNTY.
BALANCE OF FRESNO COUNTY	FRESNO COUNTY LESS CLOVIS CITY, FRESNO CITY.
GILROY CITY	GILROY CITY IN SANTA CLARA COUNTY.
GLENN COUNTY	GLENN COUNTY.
HANFORD CITY	HANFORD CITY IN KINGS COUNTY.
HEMET CITY	HEMET CITY IN RIVERSIDE COUNTY.
HOLISTER CITY	HOLISTER CITY IN SAN BENITO COUNTY.
HUNTINGTON PARK CITY	HUNTINGTON PARK CITY IN LOS ANGELES COUNTY.
IMPERIAL BEACH CITY	IMPERIAL BEACH CITY IN SAN DIEGO COUNTY.
BALANCE OF IMPERIAL COUNTY	IMPERIAL COUNTY LESS CALEXICO CITY, EL CENTRO CITY.
INDIO CITY	INDIO CITY IN RIVERSIDE COUNTY.
INGLEWOOD CITY	INGLEWOOD CITY IN LOS ANGELES COUNTY.
BALANCE OF KERN COUNTY	KERN COUNTY LESS BAKERSFIELD CITY, DELANO CITY, RIDGECREST CITY.
BALANCE OF KINGS COUNTY	KINGS COUNTY LESS HANFORD CITY.
LA PUENTE CITY	LA PUENTE CITY IN LOS ANGELES COUNTY.
LAKE COUNTY	LAKE COUNTY.
LAWNDALE CITY	LAWNDALE CITY IN LOS ANGELES COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
LODI CITY	LODI CITY IN SAN JOAQUIN COUNTY.
LOS ANGELES CITY	LOS ANGELES CITY IN LOS ANGELES COUNTY.
LOS BANOS CITY	LOS BANOS CITY IN MERCED COUNTY.
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY.
MADERA CITY	MADERA CITY IN MADERA COUNTY.
BALANCE OF MADERA COUNTY	MADERA COUNTY LESS MADERA CITY.
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY.
MARIPOSA COUNTY	MARIPOSA COUNTY.
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGELES COUNTY.
MENDOCINO COUNTY	MENDOCINO COUNTY.
MERCED CITY	MERCED CITY IN MERCED COUNTY.
BALANCE OF MERCED COUNTY	MERCED COUNTY LESS LOS BANOS CITY, MERCED CITY.
MILPITAS CITY	MILPITAS CITY IN SANTA CLARA COUNTY.
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY.
MODOC COUNTY	MODOC COUNTY.
BALANCE OF MONTEREY COUNTY	MONTEREY COUNTY LESS MARINA CITY, MONTEREY CITY, SALINAS CITY, SEASIDE CITY.
NATIONAL CITY	NATIONAL CITY IN SAN DIEGO COUNTY.
OAKLAND CITY	OAKLAND CITY IN ALAMEDA COUNTY.
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY.
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY.
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY.
PICO RIVERA CITY	PICO RIVERA CITY IN LOS ANGELES COUNTY.
PITTSBURG CITY	PITTSBURG CITY IN CONTRA COSTA COUNTY.
PLUMAS COUNTY	PLUMAS COUNTY.
POMONA CITY	POMONA CITY IN LOS ANGELES COUNTY.
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY.
REDDING CITY	REDDING CITY IN SHASTA COUNTY.
RICHMOND CITY	RICHMOND CITY IN CONTRA COSTA COUNTY.
ROSEMEAD CITY	ROSEMEAD CITY IN LOS ANGELES COUNTY.
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY.
SAN BERNARDINO CITY	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY.
SAN FRANCISCO CITY	SAN FRANCISCO CITY IN SAN FRANCISCO COUNTY.
SAN JACINTO CITY	SAN JACINTO CITY IN RIVERSIDE COUNTY.
BALANCE OF SAN JOAQUIN COUNTY	SAN JOAQUIN COUNTY LESS LODI CITY, MANTECA CITY, STOCKTON CITY, TRACEY CITY.
SAN JOSE CITY	SAN JOSE CITY IN SANTA CLARA COUNTY.
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY.
SANTA ANA CITY	SANTA ANA CITY IN ORANGE COUNTY.
SANTA CLARA CITY	SANTA CLARA CITY IN SANTA CLARA COUNTY.
BALANCE OF SANTA CLARA COUNTY	SANTA CLARA COUNTY LESS CAMPBELL CITY, CUPERTINO CITY, GILROY CITY, LOS ALTOS CITY, LOS GATOS TOWN, MILPITAS CITY, MORGAN HILL CITY, MOUNTAIN VIEW CITY, PALO ALTO CITY, SAN JOSE CITY, SANTA CLARA CITY, SARATOGA CITY, SUNNYVALE CITY.
SANTA CRUZ CITY	SANTA CRUZ CITY IN SANTA CRUZ COUNTY.
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY.
SEASIDE CITY	SEASIDE CITY IN MONTEREY COUNTY.
BALANCE OF SHASTA COUNTY	SHASTA COUNTY LESS REDDING CITY.
SIERRA COUNTY	SIERRA COUNTY.
SISKIYOU COUNTY	SISKIYOU COUNTY.
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY.
BALANCE OF STANISLAUS COUNTY	STANISLAUS COUNTY LESS CERES CITY, MODESTO CITY, TURLOCK CITY.
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY.
SUNNYVALE CITY	SUNNYVALE CITY IN SANTA CLARA COUNTY.
BALANCE OF SUTTER COUNTY	SUTTER COUNTY LESS YUBA CITY.
TRACEY CITY	TRACEY CITY IN SAN JOAQUIN COUNTY.
TRINITY COUNTY	TRINITY COUNTY.
TULARE CITY	TULARE CITY IN TULARE COUNTY.
BALANCE OF TULARE COUNTY	TULARE COUNTY LESS PORTERVILLE CITY, TULARE CITY, VISALIA CITY.
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY.
TWENTYNINE PALMS CITY	TWENTYNINE PALMS CITY IN SAN BERNARDINO COUNTY.
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY.
VISALIA CITY	VISALIA CITY IN TULARE COUNTY.
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY.
YUBA CITY	YUBA CITY IN SUTTER COUNTY.
YUBA COUNTY	YUBA COUNTY.
COLORADO:	

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
BALANCE OF ADAMS COUNTY	ADAMS COUNTY LESS ARVADA CITY, AURORA CITY, NORTHGLENN CITY, THORNTON CITY, WESTMINSTER CITY.
BENT COUNTY	BENT COUNTY.
CONEJOS COUNTY	CONEJOS COUNTY.
COSTILLA COUNTY	COSTILLA COUNTY.
DENVER CITY	DENVER CITY IN DENVER COUNTY.
DOLORES COUNTY	DOLORES COUNTY.
LAKE COUNTY	LAKE COUNTY.
LONGMONT CITY	LONGMONT CITY IN BOULDER COUNTY.
PUEBLO CITY	PUEBLO CITY IN PUEBLO COUNTY.
SAN JUAN COUNTY	SAN JUAN COUNTY.
CONNECTICUT:	
ANSONIA TOWN	ANSONIA TOWN.
BRIDGEPORT CITY	BRIDGEPORT CITY.
HARTFORD CITY	HARTFORD CITY.
KILLINGLY TOWN	KILLINGLY TOWN.
NEW BRITAIN CITY	NEW BRITAIN CITY.
WATERBURY CITY	WATERBURY CITY.
WINCHESTER TOWN	WINCHESTER TOWN.
FLORIDA:	
DANIA BEACH CITY	DANIA BEACH CITY IN BROWARD COUNTY.
DE SOTO COUNTY	DE SOTO COUNTY.
DELRAY BEACH CITY	DELRAY BEACH CITY IN PALM BEACH COUNTY.
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY.
FT. LAUDERDALE CITY	FT. LAUDERDALE CITY IN BROWARD COUNTY.
GLADES COUNTY	GLADES COUNTY.
HALLANDALE CITY	HALLANDALE CITY IN BROWARD COUNTY.
HARDEE COUNTY	HARDEE COUNTY.
HENDRY COUNTY	HENDRY COUNTY.
HIALEAH CITY	HIALEAH CITY IN MIAMI-DADE COUNTY.
HOMESTEAD CITY	HOMESTEAD CITY IN MIAMI-DADE COUNTY.
INDIAN RIVER COUNTY	INDIAN RIVER COUNTY.
LAUDERDALE LAKES CITY	LAUDERDALE LAKES CITY IN BROWARD COUNTY.
MIAMI BEACH CITY	MIAMI BEACH CITY IN MIAMI-DADE COUNTY.
MIAMI CITY	MIAMI CITY IN MIAMI-DADE COUNTY.
NORTH MIAMI CITY	NORTH MIAMI CITY IN MIAMI-DADE COUNTY.
RIVIERA BEACH CITY	RIVIERA BEACH CITY IN PALM BEACH COUNTY.
TAYLOR COUNTY	TAYLOR COUNTY.
WEST PALM BEACH CITY	WEST PALM BEACH CITY IN PALM BEACH COUNTY.
GEORGIA:	
APPLING COUNTY	APPLING COUNTY.
ATKINSON COUNTY	ATKINSON COUNTY.
ATLANTA CITY	ATLANTA CITY IN DE KALB COUNTY, FULTON COUNTY.
BURKE COUNTY	BURKE COUNTY.
CHATTAHOOCHEE COUNTY	CHATTAHOOCHEE COUNTY.
EAST POINT CITY	EAST POINT CITY IN FULTON COUNTY.
GREENE COUNTY	GREENE COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
JEFF DAVIS COUNTY	JEFF DAVIS COUNTY.
JEFFERSON COUNTY	JEFFERSON COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
LA GRANGE CITY	LA GRANGE CITY IN TROUP COUNTY.
LAMAR COUNTY	LAMAR COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MACON COUNTY	MACON COUNTY.
MC DUFFIE COUNTY	MC DUFFIE COUNTY.
MERIWETHER COUNTY	MERIWETHER COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
TALIAFERRO COUNTY	TALIAFERRO COUNTY.
TELFAIR COUNTY	TELFAIR COUNTY.
TERRELL COUNTY	TERRELL COUNTY.
TOOMBS COUNTY	TOOMBS COUNTY.
TREUTLEN COUNTY	TREUTLEN COUNTY.
TURNER COUNTY	TURNER COUNTY.
UPSON COUNTY	UPSON COUNTY.
WARREN COUNTY	WARREN COUNTY.
WHEELER COUNTY	WHEELER COUNTY.
WILKES COUNTY	WILKES COUNTY.
IDAHO:	
ADAMS COUNTY	ADAMS COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
BENEWAH COUNTY	BENEWAH COUNTY.
BONNER COUNTY	BONNER COUNTY.
BOUNDARY COUNTY	BOUNDARY COUNTY.
CALDWELL CITY	CALDWELL CITY IN CANYON COUNTY.
CARIBOU COUNTY	CARIBOU COUNTY.
CLEARWATER COUNTY	CLEARWATER COUNTY.
CUSTER COUNTY	CUSTER COUNTY.
ELMORE COUNTY	ELMORE COUNTY.
GEM COUNTY	GEM COUNTY.
IDAHO COUNTY.	IDAHO COUNTY.
BALANCE OF KOOTENAI COUNTY	KOOTENAI COUNTY LESS COEUR D ALENE CITY.
MINIDOKA COUNTY	MINIDOKA COUNTY.
NAMPA CITY	NAMPA CITY IN CANYON COUNTY.
PAYETTE COUNTY	PAYETTE COUNTY.
POWER COUNTY	POWER COUNTY.
SHOSHONE COUNTY	SHOSHONE COUNTY.
VALLEY COUNTY	VALLEY COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
ILLINOIS:	
ALEXANDER COUNTY	ALEXANDER COUNTY.
ALTON CITY	ALTON CITY IN MADISON COUNTY.
AURORA CITY	AURORA CITY IN DU PAGE COUNTY.
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY.
BOONE COUNTY	BOONE COUNTY.
BUREAU COUNTY	BUREAU COUNTY.
CALUMET CITY	CALUMET CITY IN COOK COUNTY.
CARPENTERSVILLE CITY	CARPENTERSVILLE CITY IN KANE COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CHICAGO CITY	CHICAGO CITY IN COOK COUNTY.
CHICAGO HEIGHTS CITY	CHICAGO HEIGHTS CITY IN COOK COUNTY.
CICERO CITY	CICERO CITY IN COOK COUNTY.
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY.
DE WITT COUNTY	DE WITT COUNTY.
DECATUR CITY	DECATUR CITY IN MACON COUNTY.
DES PLAINES CITY	DES PLAINES CITY IN COOK COUNTY.
DOLTON VILLAGE	DOLTON VILLAGE IN COOK COUNTY.
EAST ST. LOUIS CITY	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY.
ELGIN CITY	ELGIN CITY IN COOK COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
FREEPORT CITY	FREEPORT CITY IN STEPHENSON COUNTY.
FULTON COUNTY	FULTON COUNTY.
GALESBURG CITY	GALESBURG CITY IN KNOX COUNTY.
GALLATIN COUNTY	GALLATIN COUNTY.
GRANITE CITY	GRANITE CITY IN MADISON COUNTY.
GRUNDY COUNTY	GRUNDY COUNTY.
HANOVER PARK VILLAGE	HANOVER PARK VILLAGE IN COOK COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HARVEY CITY	HARVEY CITY IN COOK COUNTY.
JASPER COUNTY	JASPER COUNTY.
JOLIET CITY	JOLIET CITY IN WILL COUNTY.
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY.
LA SALLE COUNTY	LA SALLE COUNTY.
MARION COUNTY	MARION COUNTY.
MASON COUNTY	MASON COUNTY.
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
NORTH CHICAGO CITY	NORTH CHICAGO CITY IN LAKE COUNTY.
PARK FOREST VILLAGE	PARK FOREST VILLAGE IN COOK COUNTY, WILL COUNTY.
PERRY COUNTY	PERRY COUNTY.
POPE COUNTY	POPE COUNTY.
PULASKI COUNTY	PULASKI COUNTY.
PUTNAM COUNTY	PUTNAM COUNTY.
ROCKFORD CITY	ROCKFORD CITY IN WINNEBAGO COUNTY.
ROMEOVILLE VILLAGE	ROMEOVILLE VILLAGE IN WILL COUNTY.
ROUND LAKE BEACH VILLAGE	ROUND LAKE BEACH VILLAGE IN LAKE COUNTY.
SALINE COUNTY	SALINE COUNTY.
ST. CHARLES CITY	ST. CHARLES CITY IN DU PAGE COUNTY, KANE COUNTY.
STARK COUNTY	STARK COUNTY.
WABASH COUNTY	WABASH COUNTY.
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
WEST CHICAGO CITY	WEST CHICAGO CITY IN DU PAGE COUNTY.
WHITESIDE COUNTY	WHITESIDE COUNTY.
INDIANA:	
ANDERSON CITY	ANDERSON CITY IN MADISON COUNTY.
BLACKFORD COUNTY	BLACKFORD COUNTY.
EAST CHICAGO CITY	EAST CHICAGO CITY IN LAKE COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
FULTON COUNTY	FULTON COUNTY.
GARY CITY	GARY CITY IN LAKE COUNTY.
GREENE COUNTY	GREENE COUNTY.
JAY COUNTY	JAY COUNTY.
KOKOMO CITY	KOKOMO CITY IN HOWARD COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
MARION CITY	MARION CITY IN GRANT COUNTY.
MIAMI COUNTY	MIAMI COUNTY.
MICHIGAN CITY	MICHIGAN CITY IN LA PORTE COUNTY.
MUNCIE CITY	MUNCIE CITY IN DELAWARE COUNTY.
ORANGE COUNTY	ORANGE COUNTY.
RANDOLPH COUNTY	RANDOLPH COUNTY.
STARKE COUNTY	STARKE COUNTY.
STEUBEN COUNTY	STEUBEN COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WHITE COUNTY	WHITE COUNTY.
IOWA:	
BURLINGTON CITY	BURLINGTON CITY IN DES MOINES COUNTY.
CLARKE COUNTY	CLARKE COUNTY.
LEE COUNTY	LEE COUNTY.
TAMA COUNTY	TAMAY COUNTY.
KANSAS:	
CHEROKEE COUNTY	CHEROKEE COUNTY.
COFFEY COUNTY	COFFEY COUNTY.
DONIPHAN COUNTY	DONIPHAN COUNTY.
KANSAS CITY KN	KANSAS CITY KN IN WYANDOTTE COUNTY.
LEAVENWORTH CITY	LEAVENWORTH CITY IN LEAVENWORTH COUNTY.
LINN COUNTY	LINN COUNTY.
SUMNER COUNTY	SUMNER COUNTY.
WICHITA CITY	WICHITA CITY IN SEDGWICK COUNTY.
KENTUCKY:	
ALLEN COUNTY	ALLEN COUNTY.
BALLARD COUNTY	BALLARD COUNTY.
BELL COUNTY	BELL COUNTY.
BOYLE COUNTY	BOYLE COUNTY.
BREATHITT COUNTY	BREATHITT COUNTY.
BRECKINRIDGE COUNTY	BRECKINRIDGE COUNTY.
BUTLER COUNTY	BUTLER COUNTY.
CARLISLE COUNTY	CARLISLE COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CARTER COUNTY	CARTER COUNTY.
CASEY COUNTY	CASEY COUNTY.
CLAY COUNTY	CLAY COUNTY.
CLINTON COUNTY	CLINTON COUNTY.
CUMBERLAND COUNTY	CUMBERLAND COUNTY.
EDMONSON COUNTY	EDMONSON COUNTY.
ELLIOTT COUNTY	ELLIOTT COUNTY.
FLOYD COUNTY	FLOYD COUNTY.
FULTON COUNTY	FULTON COUNTY.
GRAVES COUNTY	GRAVES COUNTY.
GRAYSON COUNTY	GRAYSON COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
HARLAN COUNTY	HARLAN COUNTY.
HARRISON COUNTY	HARRISON COUNTY.
HICKMAN COUNTY	HICKMAN COUNTY.
KNOX COUNTY	KNOX COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LEE COUNTY	LEE COUNTY.
LESLIE COUNTY	LESLIE COUNTY.
LETCHER COUNTY	LETCHER COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LOGAN COUNTY	LOGAN COUNTY.
LYON COUNTY	LYON COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
MAGOFFIN COUNTY	MAGOFFIN COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MARTIN COUNTY	MARTIN COUNTY.
BALANCE OF MC CRACKEN COUNTY	MC CRACKEN COUNTY LESS PADUCAH CITY.
MC CREARY COUNTY	MC CREARY COUNTY.
MC LEAN COUNTY	MC LEAN COUNTY.
MENIFEE COUNTY	MENIFEE COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
MUHLENBERG COUNTY	MUHLENBERG COUNTY.
NICHOLAS COUNTY	NICHOLAS COUNTY.
OHIO COUNTY	OHIO COUNTY.
PERRY COUNTY	PERRY COUNTY.
POWELL COUNTY	POWELL COUNTY.
RICHMOND CITY	RICHMOND CITY IN MADISON COUNTY.
RUSSELL COUNTY	RUSSELL COUNTY.
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS BOWLING GREEN CITY.
WEBSTER COUNTY	WEBSTER COUNTY.
WOLFE COUNTY	WOLFE COUNTY.
LOUISIANA:	
ALEXANDRIA CITY	ALEXANDRIA CITY IN RAPIDES PARISH.
ALLEN PARISH	ALLEN PARISH.
ASCENSION PARISH	ASCENSION PARISH.
ASSUMPTION PARISH	ASSUMPTION PARISH.
AVOYELLES PARISH	AVOYELLES PARISH.
BEAUREGARD PARISH	BEAUREGARD PARISH.
BIENVILLE PARISH	BIENVILLE PARISH.
CALDWELL PARISH	CALDWELL PARISH.
CATAHOULA PARISH	CATAHOULA PARISH.
CLAIBORNE PARISH	CLAIBORNE PARISH.
CONCORDIA PARISH	CONCORDIA PARISH.
DE SOTO PARISH	DE SOTO PARISH.
EAST CARROLL PARISH	EAST CARROLL PARISH.
EVANGELINE PARISH	EVANGELINE PARISH.
FRANKLIN PARISH	FRANKLIN PARISH.
GRANT PARISH	GRANT PARISH.
IBERVILLE PARISH	IBERVILLE PARISH.
JACKSON PARISH	JACKSON PARISH.
LA SALLE PARISH	LA SALLE PARISH.
LAKE CHARLES CITY	LAKE CHARLES CITY IN CALCASIEU PARISH.
MADISON PARISH	MADISON PARISH.
MONROE CITY	MONROE CITY IN OUACHITA PARISH.
MOREHOUSE PARISH	MOREHOUSE PARISH.
NEW IBERIA CITY	NEW IBERIA CITY IN IBERIA PARISH.
POINTE COUPEE PARISH	POINTE COUPEE PARISH.
RED RIVER PARISH	RED RIVER PARISH.
RICHLAND PARISH	RICHLAND PARISH.
SABINE PARISH	SABINE PARISH.
SHREVEPORT CITY	SHREVEPORT CITY IN BOSSIER PARISH, CADDO PARISH.
ST. JAMES PARISH	ST. JAMES PARISH.
ST. JOHN BAPTIST PARISH	ST. JOHN BAPTIST PARISH.
ST. LANDRY PARISH	ST. LANDRY PARISH.
ST. MARY PARISH	ST. MARY PARISH.
TANGIPAHOA PARISH	TANGIPAHOA PARISH.
TENSAS PARISH	TENSAS PARISH.
VERMILION PARISH	VERMILION PARISH.
WASHINGTON PARISH	WASHINGTON PARISH.
WEBSTER PARISH	WEBSTER PARISH.
WEST CARROLL PARISH	WEST CARROLL PARISH.
WINN PARISH	WINN PARISH.
MAINE:	
PISCATAQUIS COUNTY	PISCATAQUIS COUNTY.
SOMERSET COUNTY	SOMERSET COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
MARYLAND:	
BALTIMORE CITY	BALTIMORE CITY.
DORCHESTER COUNTY	DORCHESTER COUNTY.
WORCESTER COUNTY	WORCESTER COUNTY.
MASSACHUSETTS:	
ADAMS TOWN	ADAMS TOWN IN BERKSHIRE COUNTY.
AQUINNAH TOWN	AQUINNAH TOWN IN DUKES COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
ASHBURNHAM TOWN	ASHBURNHAM TOWN IN WORCESTER COUNTY.
ATHOL TOWN	ATHOL TOWN IN WORCESTER COUNTY.
BROOKFIELD TOWN	BROOKFIELD TOWN IN WORCESTER COUNTY.
CHELSEA CITY	CHELSEA CITY IN SUFFOLK COUNTY.
FALL RIVER CITY	FALL RIVER CITY IN BRISTOL COUNTY.
FITCHBURG CITY	FITCHBURG CITY IN WORCESTER COUNTY.
FLORIDA TOWN	FLORIDA TOWN IN BERKSHIRE COUNTY.
GARDNER TOWN	GARDNER TOWN IN WORCESTER COUNTY.
HARDWICK TOWN	HARDWICK TOWN IN WORCESTER COUNTY.
HARVARD TOWN	HARVARD TOWN IN WORCESTER COUNTY.
HAVERHILL CITY	HAVERHILL CITY IN ESSEX COUNTY.
HOLYOKE CITY	HOLYOKE CITY IN HAMPDEN COUNTY.
HUBBARDSTON TOWN	HUBBARDSTON TOWN IN WORCESTER COUNTY.
LAWRENCE CITY	LAWRENCE CITY IN ESSEX COUNTY.
LEOMINSTER CITY	LEOMINSTER CITY IN WORCESTER COUNTY.
LOWELL CITY	LOWELL CITY IN MIDDLESEX COUNTY.
METHUEN CITY	METHUEN CITY IN ESSEX COUNTY.
NEW BEDFORD CITY	NEW BEDFORD CITY IN BRISTOL COUNTY.
NORTHBRIDGE TOWN	NORTHBRIDGE TOWN IN WORCESTER COUNTY.
ORANGE TOWN	ORANGE TOWN IN FRANKLIN COUNTY.
PHILLIPSTON TOWN	PHILLIPSTON TOWN IN WORCESTER COUNTY.
PROVINCETOWN TOWN	PROVINCETOWN TOWN IN BARNSTABLE COUNTY.
ROWE TOWN	ROWE TOWN IN FRANKLIN COUNTY.
ROYALSTON TOWN	ROYALSTON TOWN IN WORCESTER COUNTY.
SALISBURY TOWN	SALISBURY TOWN IN ESSEX COUNTY.
SOUTHBRIDGE TOWN	SOUTHBRIDGE TOWN IN WORCESTER COUNTY.
SPRINGFIELD CITY	SPRINGFIELD CITY IN HAMPDEN COUNTY.
TEMPLETON TOWN	TEMPLETON TOWN IN WORCESTER COUNTY.
TRURO TOWN	TRURO TOWN IN BARNSTABLE COUNTY.
WARWICK TOWN	WARWICK TOWN IN FRANKLIN COUNTY.
WEBSTER TOWN	WEBSTER TOWN IN WORCESTER COUNTY.
WINCHENDON TOWN	WINCHENDON TOWN IN WORCESTER COUNTY.
MICHIGAN:	
ALCONA COUNTY	ALCONA COUNTY.
ALPENA COUNTY	ALPENA COUNTY.
ANTRIM COUNTY	ANTRIM COUNTY.
ARENAC COUNTY	ARENAC COUNTY.
BARAGA COUNTY	BARAGA COUNTY.
BATTLE CREEK CITY	BATTLE CREEK CITY IN CALHOUN COUNTY.
BAY CITY	BAY CITY IN BAY COUNTY.
BENZIE COUNTY	BENZIE COUNTY.
BURTON CITY	BURTON CITY IN GENESEE COUNTY.
CHARLEVOIX COUNTY	CHARLEVOIX COUNTY.
CHEBOYGAN COUNTY	CHEBOYGAN COUNTY.
CHIPPEWA COUNTY	CHIPPEWA COUNTY.
CLARE COUNTY	CLARE COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
DELTA COUNTY	DELTA COUNTY.
DETROIT CITY	DETROIT CITY IN WAYNE COUNTY.
EMMET COUNTY	EMMET COUNTY.
FLINT CITY	FLINT CITY IN GENESEE COUNTY.
GLADWIN COUNTY	GLADWIN COUNTY.
GOGEBIC COUNTY	GOGEBIC COUNTY.
GRAND RAPIDS CITY	GRAND RAPIDS CITY IN KENT COUNTY.
HIGHLAND PARK CITY	HIGHLAND PARK CITY IN WAYNE COUNTY.
HURON COUNTY	HURON COUNTY.
INKSTER CITY	INKSTER CITY IN WAYNE COUNTY.
IOSCO COUNTY	IOSCO COUNTY.
JACKSON CITY	JACKSON CITY IN JACKSON COUNTY.
KALAMAZOO CITY	KALAMAZOO CITY IN KALAMAZOO COUNTY.
KALKASKA COUNTY	KALKASKA COUNTY.
KEWEENAW COUNTY	KEWEENAW COUNTY.
LAKE COUNTY	LAKE COUNTY.
LAPEER COUNTY	LAPEER COUNTY.
LUCE COUNTY	LUCE COUNTY.
MACKINAC COUNTY	MACKINAC COUNTY.
MANISTEE COUNTY	MANISTEE COUNTY.
MASON COUNTY	MASON COUNTY.
MENOMINEE COUNTY	MENOMINEE COUNTY.
BALANCE OF MIDLAND COUNTY	MIDLAND COUNTY LESS MIDLAND CITY.
MISSAUKEE COUNTY	MISSAUKEE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
MONTCALM COUNTY	MONTCALM COUNTY.
MONTMORENCY COUNTY	MONTMORENCY COUNTY.
MOUNT MORRIS TOWNSHIP	MOUNT MORRIS TOWNSHIP IN GENESEE COUNTY.
MUSKEGON CITY	MUSKEGON CITY IN MUSKEGON COUNTY.
BALANCE OF MUSKEGON COUNTY	MUSKEGON COUNTY LESS MUSKEGON CITY.
NEWAYGO COUNTY	NEWAYGO COUNTY.
OCEANA COUNTY	OCEANA COUNTY.
OGEMAW COUNTY	OGEMAW COUNTY.
ONTONAGON COUNTY	ONTONAGON COUNTY.
OSCEOLA COUNTY	OSCEOLA COUNTY.
OSCODA COUNTY	OSCODA COUNTY.
OTSEGO COUNTY	OTSEGO COUNTY.
PONTIAC CITY	PONTIAC CITY IN OAKLAND COUNTY.
PORT HURON CITY	PORT HURON CITY IN ST. CLAIR COUNTY.
PRESQUE ISLE COUNTY	PRESQUE ISLE COUNTY.
ROSCOMMON COUNTY	ROSCOMMON COUNTY.
ROSEVILLE CITY	ROSEVILLE CITY IN MACOMB COUNTY.
SAGINAW CITY	SAGINAW CITY IN SAGINAW COUNTY.
SANILAC COUNTY	SANILAC COUNTY.
SCHOOLCRAFT COUNTY	SCHOOLCRAFT COUNTY.
SHIAWASSEE COUNTY	SHIAWASSEE COUNTY.
BALANCE OF ST. CLAIR COUNTY	ST. CLAIR COUNTY LESS PORT HURON CITY.
ST. JOSEPH COUNTY	ST. JOSEPH COUNTY.
TUSCOLA COUNTY	TUSCOLA COUNTY.
VAN BUREN COUNTY	VAN BUREN COUNTY.
WARREN CITY	WARREN CITY IN MACOMB COUNTY.
WEXFORD COUNTY	WEXFORD COUNTY.
MINNESOTA:	
AITKIN COUNTY	AITKIN COUNTY.
CASS COUNTY	CASS COUNTY.
CLEARWATER COUNTY	CLEARWATER COUNTY.
GRANT COUNTY	GRANT COUNTY.
ITASCA COUNTY	ITASCA COUNTY.
KANABEC COUNTY	KANABEC COUNTY.
KITTSON COUNTY	KITTSON COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MEEKER COUNTY	MEEKER COUNTY.
MILLE LACS COUNTY	MILLE LACS COUNTY.
MORRISON COUNTY	MORRISON COUNTY.
PINE COUNTY	PINE COUNTY.
RED LAKE COUNTY	RED LAKE COUNTY.
ROSEAU COUNTY	ROSEAU COUNTY.
MISSISSIPPI:	
ADAMS COUNTY	ADAMS COUNTY.
ALCORN COUNTY	ALCORN COUNTY.
AMITE COUNTY	AMITE COUNTY.
ATTALA COUNTY	ATTALA COUNTY.
BENTON COUNTY	BENTON COUNTY.
BOLIVAR COUNTY	BOLIVAR COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CHICKASAW COUNTY	CHICKASAW COUNTY.
CHOCTAW COUNTY	CHOCTAW COUNTY.
CLAIBORNE COUNTY	CLAIBORNE COUNTY.
CLARKE COUNTY	CLARKE COUNTY.
CLAY COUNTY	CLAY COUNTY.
COAHOMA COUNTY	COAHOMA COUNTY.
COLUMBUS CITY	COLUMBUSS CITY IN LOWNDES COUNTY.
COPIAH COUNTY	COPIAH COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
GEORGE COUNTY	GEORGE COUNTY.
GREENE COUNTY	GREENE COUNTY.
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY.
HOLMES COUNTY	HOLMES COUNTY.
HUMPHREYS COUNTY	HUMPHREYS COUNTY.
ISSAQUENA COUNTY	JEFFERSON COUNTY.
JEFFERSON DAVIS COUNTY	JEFFERSON DAVIS COUNTY.
KEMPER COUNTY	KEMPER COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LEFLORE COUNTY	LEFLORE COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
MERIDIAN CITY	MERIDIAN CITY IN LAUDERDALE COUNTY.
MONROE COUNTY	MONROE COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
NOXUBEE COUNTY	NOXUBEE COUNTY.
PANOLA COUNTY	PANOLA COUNTY.
PERRY COUNTY	PERRY COUNTY.
QUITMAN COUNTY	QUITMAN COUNTY.
SHARKEY COUNTY	SHARKEY COUNTY.
SUNFLOWER COUNTY	SUNFLOWER COUNTY.
TALLAHATCHIE COUNTY	TALLAHATCHIE COUNTY.
TIPPAH COUNTY	TIPPAH COUNTY.
TISHOMINGO COUNTY	TISHOMINGO COUNTY.
TUNICA COUNTY	TUNICA COUNTY.
VICKSBURG CITY	VICKSBURG CITY IN WARREN COUNTY.
WALTHALL COUNTY	WALTHALL COUNTY.
BALANCE OF WASHINGTON COUNTY	WASHINGTON COUNTY LESS GREENVILLE CITY.
WAYNE COUNTY	WAYNE COUNTY.
WEBSTER COUNTY	WEBSTER COUNTY.
WILKINSON COUNTY	WILKINSON COUNTY.
WINSTON COUNTY	WINSTON COUNTY.
YALOBUSHA COUNTY	YALOBUSHA COUNTY.
YAZOO COUNTY	YAZOO COUNTY.
MISSOURI:	
BATES COUNTY	BATES COUNTY.
BENTON COUNTY	BENTON COUNTY.
CALDWELL COUNTY	CALDWELL COUNTY.
CHARITON COUNTY	CHARITON COUNTY.
CLARK COUNTY	CLARK COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
DUNKLIN COUNTY	DUNKLIN COUNTY.
HICKORY COUNTY	HICKORY COUNTY.
IRON COUNTY	IRON COUNTY.
KANSAS CITY MO	KANSAS CITY MO IN CASS COUNTY, CLAY COUNTY, JACKSON COUNTY, PLATTE COUNTY.
LACLEDE COUNTY	LACLEDE COUNTY.
LINN COUNTY	LINN COUNTY.
MADISON COUNTY	MADISON COUNTY.
MILLER COUNTY	MILLER COUNTY.
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
NEW MADRID COUNTY	NEW MADRID COUNTY.
PEMISCOT COUNTY	PEMISCOT COUNTY.
REYNOLDS COUNTY	REYNOLDS COUNTY.
RIPLEY COUNTY	RIPLEY COUNTY.
SHANNON COUNTY	SHANNON COUNTY.
ST. LOUIS CITY	ST. LOUIS CITY.
ST. FRANCOIS COUNTY	ST. FRANCOIS COUNTY.
STONE COUNTY	STONE COUNTY.
SULLIVAN COUNTY	SULLIVAN COUNTY.
TANEY COUNTY	TANEY COUNTY.
TEXAS COUNTY	TEXAS COUNTY.
UNIVERSITY CITY	UNIVERSITY CITY IN ST. LOUIS COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
WRIGHT COUNTY	WRIGHT COUNTY.
MONTANA:	
BIG HORN COUNTY	BIG HORN COUNTY.
GLACIER COUNTY	GLACIER COUNTY.
LAKE COUNTY	LAKE COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MINERAL COUNTY	MINERAL COUNTY.
MUSSELSHELL COUNTY	MUSSELSHELL COUNTY.
ROOSEVELT COUNTY	ROOSEVELT COUNTY.
SANDERS COUNTY	SANDERS COUNTY.
NEBRASKA:	
THURSTON COUNTY	THURSTON COUNTY.
NEVADA:	
LANDER COUNTY	LANDER COUNTY.
NORTH LAS VEGAS CITY	NORTH LAS VEGAS CITY IN CLARK COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
NEW JERSEY:	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY.
CAMDEN CITY	CAMDEN CITY IN CAMDEN COUNTY.
CAPE MAY COUNTY	CAPE MAY COUNTY.
CITY OF ORANGE TOWNSHIP	CITY OF ORANGE TOWNSHIP IN ESSEX COUNTY.
BALANCE OF CUMBERLAND COUNTY	CUMBERLAND COUNTY LESS MILLVILLE CITY, VINELAND CITY.
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY.
ELIZABETH CITY	ELIZABETH CITY IN UNION COUNTY.
GARFIELD CITY	GARFIELD CITY IN BERGEN COUNTY.
IRVINGTON TOWNSHIP	IRVINGTON TOWNSHIP IN ESSEX COUNTY.
JERSEY CITY	JERSEY CITY IN HUDSON COUNTY.
LONG BRANCH CITY	LONG BRANCH CITY IN MONMOUTH COUNTY.
MILLVILLE CITY	MILLVILLE CITY IN CUMBERLAND COUNTY.
NEW BRUNSWICK CITY	NEW BRUNSWICK CITY IN MIDDLESEX
NEWARK CITY	NEWARK CITY IN ESSEX COUNTY.
NORTH BERGEN TOWNSHIP	NORTH BERGEN TOWNSHIOP IN HUDSON COUNTY.
PASSAIC CITY	PASSAIC CITY IN PASSAIC COUNTY.
PATERSON CITY	PATERSON CITY IN PASSAIC COUNTY.
PERTH AMBOY CITY	PERTH AMBOY CITY IN MIDDLESEX COUNTY.
PLAINFIELD CITY	PLAINFIELD CITY IN UNION COUNTY.
TRENTON CITY	TRENTON CITY IN MERCER COUNTY.
UNION CITY	UNION CITY IN HUDSON COUNTY.
VINELAND CITY	VINELAND CITY IN CUMBERLAND COUNTY.
WEST NEW YORK TOWN	WEST NEW YORK TOWN IN HUDSON COUNTY.
NEW MEXICO:	
CARLSBAD CITY	CARLSBAD CITY IN EDDY COUNTY.
CATRON COUNTY	CATRON COUNTY.
BALANCE OF DONA ANA COUNTY	DONA ANA COUNTY LESS LAS CRUCES CITY.
GRANT COUNTY	GRANT COUNTY.
GUADALUPE COUNTY	GUADALUPE COUNTY.
LUNA COUNTY	LUNA COUNTY.
MC KINLEY COUNTY	MC KINLEY COUNTY.
MORA COUNTY	MORA COUNTY.
BALANCE OF OTERO COUNTY	OTERO COUNTY LESS ALAMOGORDO CITY.
RIO ARRIBA COUNTY	RIO ARRIBA COUNTY.
ROSWELL CITY	ROSWELL CITY IN CHAVES COUNTY.
BALANCE OF SAN JUAN COUNTY	SAN JUAN COUNTY LESS FARMINGTON CITY.
BALANCE OF SANDOVAL COUNTY	SANDOVAL COUNTY LESS RIO RANCHO CITY.
TAOS COUNTY	TAOS COUNTY.
NEW YORK:	
AUBURN CITY	AUBURN CITY IN CAYUGA COUNTY.
BINGHAMTON CITY	BINGHAMTON CITY IN BROOME COUNTY.
BRONX COUNTY	BRONX COUNTY.
BUFFALO CITY	BUFFALO CITY IN ERIE COUNTY.
CORTLAND COUNTY	CORTLAND COUNTY.
ELMIRA CITY	ELMIRA CITY IN CHEMUNG COUNTY.
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS WATERTOWN CITY.
KINGS COUNTY	KINGS COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LOCKPORT CITY	LOCKPORT CITY IN NIAGARA COUNTY.
NEW YORK COUNTY	NEW YORK COUNTY.
NEWBURGH CITY	NEWBURGH CITY IN ORANGE COUNTY.
NIAGARA FALLS CITY	NIAGARA FALLS CITY IN NIAGARA COUNTY.
ORLEANS COUNTY	ORLEANS COUNTY.
OSWEGO COUNTY	OSWEGO COUNTY.
ROCHESTER CITY	ROCHESTER CITY IN MONROE COUNTY.
SCHUYLER COUNTY	SCHUYLER COUNTY.
ST. LAWRENCE COUNTY	ST. LAWRENCE COUNTY.
STEUBEN COUNTY	STEUBEN COUNTY.
SYRACUSE CITY	SYRACUSE CITY IN ONONDAGA COUNTY.
UTICA CITY	UTICA CITY IN ONEIDA COUNTY.
WATERTOWN CITY	WATERTOWN CITY IN JEFFERSON COUNTY.
NORTH CAROLINA:	
ALEXANDER COUNTY	ALEXANDER COUNTY.
ALLEGHANY COUNTY	ALLEGHANY COUNTY.
ANSON COUNTY	ANSON COUNTY.
ASHE COUNTY	ASHE COUNTY.
BEAUFORT COUNTY	BEAUFORT COUNTY.
BERTIE COUNTY	BERTIE COUNTY.
BLADEN COUNTY	BLADEN COUNTY.
BALANCE OF BURKE COUNTY	BURKE COUNTY LESS HICKORY CITY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
BURLINGTON CITY	BURLINGTON CITY IN ALAMANCE COUNTY.
CALDWELL COUNTY	CALDWELL COUNTY.
CASWELL COUNTY	CASWELL COUNTY.
BALANCE OF CATAWBA COUNTY	CATAWBA COUNTY LESS HICKORY CITY.
CHEROKEE COUNTY	CHEROKEE COUNTY.
CLEVELAND COUNTY	CLEVELAND COUNTY.
COLUMBUS COUNTY	COLUMBUS COUNTY.
CONCORD CITY	CONCORD CITY IN CABARRUS COUNTY.
BALANCE OF DAVIDSON COUNTY	DAVIDSON COUNTY LESS HIGH POINT CITY.
DUPLIN COUNTY	DUPLIN COUNTY.
BALANCE OF EDGECOMBE COUNTY	EDGECOMBE COUNTY LESS ROCKY MOUNT CITY.
BALANCE OF GASTON COUNTY	GASTON COUNTY LESS GASTONIA CITY.
GASTONIA CITY	GASTONIA CITY IN GASTON COUNTY.
GOLDSBORO CITY	GOLDSBORO CITY IN WAYNE COUNTY.
GRAHAM COUNTY	GRAHAM COUNTY.
GREENVILLE CITY	GREENVILLE CITY IN PITT COUNTY.
HALIFAX COUNTY	HALIFAX COUNTY.
HARNETT COUNTY	HARNETT COUNTY.
HICKORY CITY	HICKORY CITY IN BURKE COUNTY, CATAWBA COUNTY.
HIGH POINT CITY	HIGH POINT CITY IN DAVIDSON COUNTY; GUILFORD COUNTY; RANDOLPH COUNTY.
HOKE COUNTY	HOKE COUNTY.
HYDE COUNTY	HYDE COUNTY.
KANNAPOLIS CITY	KANNAPOLIS CITY IN CABARRUS COUNTY, ROWAN COUNTY.
KINSTON CITY	KINSTON CITY IN LENOIR COUNTY.
LEE COUNTY	LEE COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MARTIN COUNTY	MARTIN COUNTY.
MC DOWELL COUNTY	MC DOWELL COUNTY.
MITCHELL COUNTY	MITCHELL COUNTY.
MONROE CITY	MONROE CITY IN UNION COUNTY.
MONTGOMERY COUNTY	MONTGOMERY COUNTY.
BALANCE OF NASH COUNTY	NASH COUNTY LESS ROCKY MOUNT CITY.
NORTHAMPTON COUNTY	NORTHAMPTON COUNTY.
PENDER COUNTY	PENDER COUNTY.
PERSON COUNTY	PERSON COUNTY.
RICHMOND COUNTY	RICHMOND COUNTY.
ROBESON COUNTY	ROBESON COUNTY.
ROCKINGHAM COUNTY	ROCKINGHAM COUNTY.
ROCKY MOUNT CITY	ROCKY MOUNT CITY IN EDGECOMBE COUNTY; NASH COUNTY.
BALANCE OF ROWAN COUNTY	ROWAN COUNTY LESS KANNAPOLIS CITY; SALISBURY CITY.
RUTHERFORD COUNTY	RUTHERFORD COUNTY.
SALISBURY CITY	SALISBURY CITY IN ROWAN COUNTY.
SAMPSON COUNTY	SAMPSON COUNTY.
SCOTLAND COUNTY	SCOTLAND COUNTY.
STANLY COUNTY	STANLY COUNTY.
SURRY COUNTY	SURRY COUNTY.
SWAIN COUNTY	SWAIN COUNTY.
TRANSYLVANIA COUNTY	TRANSYLVANIA COUNTY.
TYRRELL COUNTY	TYRRELL COUNTY.
VANCE COUNTY	VANCE COUNTY.
WARREN COUNTY	WARREN COUNTY.
WASHINGTON COUNTY	WASHINGTON COUNTY.
WILKES COUNTY	WILKES COUNTY.
WILSON CITY	WILSON CITY IN WILSON COUNTY.
WINSTON-SALEM CITY	WINSTON-SALEM CITY IN FORSYTH COUNTY.
YANCEY COUNTY	YANCEY COUNTY.
NORTH DAKOTA:	
BENSON COUNTY	BENSON COUNTY.
MCHENRY COUNTY	MCHENRY COUNTY.
MCLEAN COUNTY	MCLEAN COUNTY.
PEMBINA COUNTY	PEMBINA COUNTY.
ROLETTE COUNTY	ROLETTE COUNTY.
SHERIDAN COUNTY	SHERIDAN COUNTY.
OHIO:	
ADAMS COUNTY	ADAMS COUNTY.
AKRON CITY	AKRON CITY IN SUMMIT COUNTY.
ASHTABULA COUNTY	ASHTABULA COUNTY.
BARBERTON CITY	BARBERTON CITY IN SUMMIT COUNTY.
BROWN COUNTY	BROWN COUNTY.
CANTON CITY	CANTON CITY IN STARK COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
CARROLL COUNTY	CARROLL COUNTY.
CINCINNATI CITY	CINCINNATI CITY IN HAMILTON COUNTY.
CLEVELAND CITY	CLEVELAND CITY IN CUYAHOGA COUNTY.
COLUMBIANA COUNTY	COLUMBIANA COUNTY.
COSHOCTON COUNTY	COSHOCTON COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
DAYTON CITY	DAYTON CITY IN MONTGOMERY COUNTY.
EAST CLEVELAND CITY	EAST CLEVELAND CITY IN CUYAHOGA COUNTY.
ELYRIA CITY	ELYRIA CITY IN LORAIN COUNTY.
GUERNSEY COUNTY	GUERNSEY COUNTY.
HARRISON COUNTY	HARRISON COUNTY.
HOCKING COUNTY	HOCKING COUNTY.
HURON COUNTY	HURON COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LIMA CITY	LIMA CITY IN ALLEN COUNTY.
LORAIN CITY	LORAIN CITY IN LORAIN COUNTY.
MANSFIELD CITY	MANSFIELD CITY IN RICHLAND COUNTY.
MARION CITY	MARION CITY IN MARION COUNTY.
MASSILLON CITY	MASSILLON CITY IN STARK COUNTY.
MEIGS COUNTY	MEIGS COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
NEWARK CITY	NEWARK CITY IN LICKING COUNTY.
NOBLE COUNTY	NOBLE COUNTY.
OTTAWA COUNTY	OTTAWA COUNTY.
PERRY COUNTY	PERRY COUNTY.
PIKE COUNTY	PIKE COUNTY.
SANDUSKY CITY	SANDUSKY CITY IN ERIE COUNTY.
SCIOTO COUNTY	SCIOTO COUNTY.
SENECA COUNTY	SENECA COUNTY.
SPRINGFIELD CITY	SPRINGFIELD CITY IN CLARK COUNTY.
TOLEDO CITY	TOLEDO CITY IN LUCAS COUNTY.
TROTWOOD CITY	TROTWOOD CITY IN MONTGOMERY COUNTY.
VINTON COUNTY	VINTON COUNTY.
WARREN CITY	WARREN CITY IN TRUMBULL COUNTY.
WILLIAMS COUNTY	WILLIAMS COUNTY.
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN MAHONING COUNTY.
ZANESVILLE CITY	ZANESVILLE CITY IN MUSKINGUM COUNTY.
OKLAHOMA:	
ADAIR COUNTY	ADAIR COUNTY.
CHOCTAW COUNTY	CHOCTAW COUNTY.
COAL COUNTY	COAL COUNTY.
HUGHES COUNTY	HUGHES COUNTY.
BALANCE OF KAY COUNTY	KAY COUNTY LESS PONCA CITY.
MAYES COUNTY	MAYES COUNTY.
MC CURTAIN COUNTY	MC CURTAIN COUNTY.
NOWATA COUNTY	NOWATA COUNTY.
OKFUSKEE COUNTY	OKFUSKEE COUNTY.
OKMULGEE COUNTY	OKMULGEE COUNTY.
OTTAWA COUNTY	OTTAWA COUNTY.
PUSHMATAHA COUNTY	PUSHMATAHA COUNTY.
SEMINOLE COUNTY	SEMINOLE COUNTY.
WOODS COUNTY	WOODS COUNTY.
OREGON:	
ALBANY CITY	ALBANY CITY IN LINN COUNTY.
BAKER COUNTY	BAKER COUNTY.
BALANCE OF CLACKAMAS COUNTY	CLACKAMAS COUNTY LESS LAKE OSWEGO CITY, OREGON CITY CITY, PORTLAND CITY.
COLUMBIA COUNTY	COLUMBIA COUNTY.
COOS COUNTY	COOS COUNTY.
CROOK COUNTY	CROOK COUNTY.
CURRY COUNTY	CURRY COUNTY.
BALANCE OF DESCHUTES COUNTY	DESCHUTES COUNTY LESS BEND CITY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
GRANT COUNTY	GRANT COUNTY.
HARNEY COUNTY	HARNEY COUNTY.
HOOD RIVER COUNTY	HOOD RIVER COUNTY.
BALANCE OF JACKSON COUNTY	JACKSON COUNTY LESS MEDFORD CITY
JEFFERSON COUNTY	JEFFERSON COUNTY.
JOSEPHINE COUNTY	JOSEPHINE COUNTY.
KLAMATH COUNTY	KLAMATH COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
LAKE COUNTY	LAKE COUNTY.
BALANCE OF LANE COUNTY	LANE COUNTY LESS EUGENE CITY, SPRINGFIELD CITY.
LINCOLN COUNTY	LINCOLN COUNTY.
BALANCE OF LINN COUNTY	LINN COUNTY LESS ALBANY CITY.
MALHEUR COUNTY	MALHEUR COUNTY.
BALANCE OF MARION COUNTY	MARION COUNTY LESS KEIZER CITY, SALEM CITY.
MC MINNVILLE CITY	MC MINNVILLE CITY IN YAMHILL COUNTY.
MORROW COUNTY	MORROW COUNTY.
BALANCE OF MULTNOMAH COUNTY	MULTNOMAH COUNTY LESS GRESHAM CITY, LAKE SWEGO CITY, PORTLAND CITY.
BALANCE OF POLK COUNTY	POLK COUNTY LESS SALEM CITY.
PORTLAND CITY	PORTLAND CITY IN CLACKAMAS COUNTY, MULTNOMAH COUNTY, WASHINGTON COUNTY.
SALEM CITY	SALEM CITY IN MARION COUNTY, POLK COUNTY.
SHERMAN COUNTY	SHERMAN COUNTY.
SPRINGFIELD CITY	SPRINGFIELD CITY IN LANE COUNTY.
UMATILLA COUNTY	UMATILLA COUNTY.
WALLOWA COUNTY	WALLOWA COUNTY.
WASCO COUNTY	WASCO COUNTY.
BALANCE OF WASHINGTON COUNTY	WASHINGTON COUNTY LESS BEAVERTON CITY, HILLSBORO CITY, PORTLAND CITY, TIGARD CITY.
WHEELER COUNTY	WHEELER COUNTY.
BALANCE OF YAMHILL COUNTY	YAMHILL COUNTY LESS MC MINNVILLE CITY.
PENNSYLVANIA:	
ARMSTRONG COUNTY	ARMSTRONG COUNTY.
BEDFORD COUNTY	BEDFORD COUNTY.
CAMERON COUNTY	CAMERON COUNTY.
CARBON COUNTY	CARBON COUNTY.
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY.
CLEARFIELD COUNTY	CLEARFIELD COUNTY.
CLINTON COUNTY	CLINTON COUNTY.
CRAWFORD COUNTY	CRAWFORD COUNTY.
ELK COUNTY	ELK COUNTY.
ERIE CITY	ERIE CITY IN ERIE COUNTY.
BALANCE OF ERIE COUNTY	ERIE COUNTY LESS ERIE CITY, MILLCREEK TOWNSHIP.
FAYETTE COUNTY	FAYETTE COUNTY.
FOREST COUNTY	FOREST COUNTY.
HAZLETON CITY	HAZLETON CITY IN LUZERNE COUNTY.
HUNTINGDON COUNTY	HUNTINGDON COUNTY.
JOHNSTOWN CITY	JOHNSTOWN CITY IN CAMBRIA COUNTY.
MC KEESPORT CITY	MC KEESPORT CITY IN ALLEGHENY COUNTY.
MIFFLIN COUNTY	MIFFLIN COUNTY.
MONROE COUNTY	MONROE COUNTY.
NEW CASTLE CITY	NEW CASTLE CITY IN LAWRENCE COUNTY.
NORTHUMBERLAND COUNTY	NORTHUMBERLAND COUNTY.
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY.
READING CITY	READING CITY IN BERKS COUNTY.
SCHUYLKILL COUNTY	SCHUYLKILL COUNTY.
SOMERSET COUNTY	SOMERSET COUNTY.
SUSQUEHANNA COUNTY	SUSQUEHANNA COUNTY.
WILLIAMSPORT CITY	WILLIAMSPORT CITY IN LYCOMING COUNTY.
YORK CITY	YORK CITY IN YORK COUNTY.
PUERTO RICO:	
ADJUNTAS MUNICIPIO	ADJUNTAS MUNICIPIO.
AGUADA MUNICIPIO	AGUADA MUNICIPIO.
AGUADILLA MUNICIPIO	AGUADILLA MUNICIPIO.
AGUAS BUENAS MUNICIPIO	AGUAS BUENAS MUNICIPIO.
AIBONITO MUNICIPIO	AIBONITO MUNICIPIO.
ANASCO MUNICIPIO	ANASCO MUNICIPIO.
ARECIBO MUNICIPIO	ARECIBO MUNICIPIO.
ARROYO MUNICIPIO	ARROYO MUNICIPIO.
BARCELONETA MUNICIPIO	BARCELONETA MUNICIPIO.
BARRANQUITAS MUNICIPIO	BARRANQUITAS MUNICIPIO.
BAYAMON MUNICIPIO	BAYAMON MUNICIPIO.
CABO ROJO MUNICIPIO	CABO ROJO MUNICIPIO.
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO.
CAMUY MUNICIPIO	CAMUY MUNICIPIO.
CANOVANAS MUNICIPIO	CANOVANAS MUNICIPIO.
CAROLINA MUNICIPIO	CAROLINA MUNICIPIO.
CATANO MUNICIPIO	CATANO MUNICIPIO.
CAYEY MUNICIPIO	CAYEY MUNICIPIO.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
CEIBA MUNICIPIO	CEIBA MUNICIPIO.
CIALES MUNICIPIO	CIALES MUNICIPIO.
CIDRA MUNICIPIO	CIDRA MUNICIPIO.
COAMO MUNICIPIO	COAMO MUNICIPIO.
COMERIO MUNICIPIO	COMERIO MUNICIPIO.
COROZAL MUNICIPIO	COROZAL MUNICIPIO.
DORADO MUNICIPIO	DORADO MUNICIPIO.
FAJARDO MUNICIPIO	FAJARDO MUNICIPIO.
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO.
GUANICA MUNICIPIO	GUANICA MUNICIPIO.
GUAYAMA MUNICIPIO	GUAYAMA MUNICIPIO.
GUAYANILLA MUNICIPIO	GUAYANILLA MUNICIPIO.
GURABO MUNICIPIO	GURABO MUNICIPIO.
HATILLO MUNICIPIO	HATILLO MUNICIPIO.
HORMIGUEROS MUNICIPIO	HORMIGUEROS MUNICIPIO.
HUMACAO MUNICIPIO	HUMACAO MUNICIPIO.
ISABELA MUNICIPIO	ISABELA MUNICIPIO.
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO.
JUANA DIAZ MUNICIPIO	JUANA DIAZ MUNICIPIO.
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO.
LAJAS MUNICIPIO	LAJAS MUNICIPIO.
LARES MUNICIPIO	LARES MUNICIPIO.
LAS MARIAS MUNICIPIO	LAS MARIAS MUNICIPIO.
LAS PIEDRAS MUNICIPIO	LAS PIEDRAS MUNICIPIO.
LOIZA MUNICIPIO	LOIZA MUNICIPIO.
LUQUILLO MUNICIPIO	LUQUILLO MUNICIPIO.
MANATI MUNICIPIO	MANATI MUNICIPIO.
MARICAO MUNICIPIO	MARICAO MUNICIPIO.
MAUNABO MUNICIPIO	MAUNABO MUNICIPIO.
MAYAGUEZ MUNICIPIO	MAYAGUEZ MUNICIPIO.
MOCA MUNICIPIO	MOCA MUNICIPIO.
MOROVIS MUNICIPIO	MOROVIS MUNICIPIO.
NAGUABO MUNICIPIO	NAGUABO MUNICIPIO.
NARANJITO MUNICIPIO	NARANJITO MUNICIPIO.
OROCOVIS MUNICIPIO	OROCOVIS MUNICIPIO.
PATILLAS MUNICIPIO	PATILLAS MUNICIPIO.
PENUELAS MUNICIPIO	PENUELAS MUNICIPIO.
PONCE MUNICIPIO	PONCE MUNICIPIO.
QUEBRADILLAS MUNICIPIO	QUEBRADILLAS MUNICIPIO.
RINCON MUNICIPIO	RINCON MUNICIPIO.
RIO GRANDE MUNICIPIO	RIO GRANDE MUNICIPIO.
SABANA GRANDE MUNICIPIO	SABANA GRANDE MUNICIPIO.
SALINAS MUNICIPIO	SALINAS MUNICIPIO.
SAN GERMAN MUNICIPIO	SAN GERMAN MUNICIPIO.
SAN JUAN MUNICIPIO	SAN JUAN MUNICIPIO.
SAN LORENZO MUNICIPIO	SAN LORENZO MUNICIPIO.
SAN SEBASTIAN MUNICIPIO	SAN SEBASTIAN MUNICIPIO.
SANTA ISABEL MUNICIPIO	SANTA ISABEL MUNICIPIO.
TOA BAJA MUNICIPIO	TOA BAJA MUNICIPIO.
UTUADO MUNICIPIO	UTUADO MUNICIPIO.
VEGA ALTA MUNICIPIO	VEGA ALTA MUNICIPIO.
VEGA BAJA MUNICIPIO	VEGA BAJA MUNICIPIO.
VIEQUES MUNICIPIO	VIEQUES MUNICIPIO.
VILLALBA MUNICIPIO	VILLALBA MUNICIPIO.
YABUCOA MUNICIPIO	YABUCOA MUNICIPIO.
YAUCO MUNICIPIO	YAUCO MUNICIPIO.
RHODE ISLAND:	
CENTRAL FALLS CITY	CENTRAL FALLS CITY, PROVIDENCE COUNTY.
NEW SHOREHAM TOWN	NEW SHOREHAM TOWN.
SOUTH CAROLINA:	
ABBEVILLE COUNTY	ABBEVILLE COUNTY
ANDERSON CITY	ANDERSON CITY IN ANDERSON COUNTY.
BARNWELL COUNTY	BARNWELL COUNTY.
CHEROKEE COUNTY	CHEROKEE COUNTY.
CHESTER COUNTY	CHESTER COUNTY.
CHESTERFIELD COUNTY	CHESTERFIELD COUNTY.
CLARENDON COUNTY	CLARENDON COUNTY.
COLLETON COUNTY	COLLETON COUNTY.
DARLINGTON COUNTY	DARLINGTON COUNTY.
DILLON COUNTY	DILLON COUNTY.
FAIRFIELD COUN	FAIRFIELD COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
FLORENCE CITY	FLORENCE CITY IN FLORENCE COUNTY.
BALANCE OF FLORENCE COUNTY	FLORENCE COUNTY LESS FLORENCE CITY.
GEORGETOWN COUNTY	GEORGETOWN COUNTY.
GREENWOOD COUNTY	GREENWOOD COUNTY.
HAMPTON COUNTY	HAMPTON COUNTY.
KERSHAW COUNTY	KERSHAW COUNTY.
LANCASTER COUNTY	LANCASTER COUNTY.
LAURENS COUNTY	LAURENS COUNTY.
LEE COUNTY	LEE COUNTY.
MARION COUNTY	MARION COUNTY.
MARLBORO COUNTY	MARLBORO COUNTY.
MC CORMICK COUNTY	MC CORMICK COUNTY.
NEWBERRY COUNTY	NEWBERRY COUNTY.
OCONEE COUNTY	OCONEE COUNTY.
ORANGEBURG COUNTY	ORANGEBURG COUNTY.
ROCKHILL CITY	ROCKHILL CITY IN YORK COUNTY.
SPARTANBURG CITY	SPARTANBURG CITY IN SPARTANBURG COUNTY.
SUMTER CITY	SUMTER CITY IN SUMTER COUNTY.
BALANCE OF SUMTER COUNTY	SUMTER COUNTY LESS SUMTER CITY.
UNION COUNTY	UNION COUNTY.
WILLIAMSBURG COUNTY	WILLIAMSBURG COUNTY.
SOUTH DAKOTA:	
BUFFALO COUNTY	BUFFALO COUNTY.
DEWEY COUNTY	DEWEY COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
SHANNON COUNTY	SHANNON COUNTY.
TODD COUNTY	TODD COUNTY.
ZIEBACH COUNTY	ZIEBACH COUNTY.
TENNESSEE:	
BEDFORD COUNTY	BEDFORD COUNTY.
BENTON COUNTY	BENTON COUNTY.
BLEDSOE COUNTY	BLEDSOE COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CLAY COUNTY	CLAY COUNTY.
COCKE COUNTY	COCKE COUNTY.
CROCKETT COUNTY	CROCKETT COUNTY.
DECATUR COUNTY	DECATUR COUNTY.
DYER COUNTY	DYER COUNTY.
FENTRESS COUNTY	FENTRESS COUNTY.
GIBSON COUNTY	GIBSON COUNTY.
GILES COUNTY	GILES COUNTY.
GRAINGER COUNTY	GRAINGER COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
HARDEMAN COUNTY	HARDEMAN COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HAYWOOD COUNTY	HAYWOOD COUNTY.
HENDERSON COUNTY	HENDERSON COUNTY.
HENRY COUNTY	HENRY COUNTY.
HICKMAN COUNTY	HICKMAN COUNTY.
HOUSTON COUNTY	HOUSTON COUNTY.
HUMPHREYS COUNTY	HUMPHREYS COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
LAUDERDALE COUNTY	LAUDERDALE COUNTY.
LAWRENCE COUNTY	LAWRENCE COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
MACON COUNTY	MACON COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MC MINN COUNTY	MC MINN COUNTY.
MC NAIRY COUNTY	MC NAIRY COUNTY.
MEIGS COUNTY	MEIGS COUNTY.
MEMPHIS CITY	MEMPHIS CITY IN SHELBY COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
MORRISTOWN CITY	MORRISTOWN CITY IN HAMBLEN COUNTY.
PERRY COUNTY	PERRY COUNTY.
PICKETT COUNTY	PICKETT COUNTY.
SCOTT COUNTY	SCOTT COUNTY.
STEWART COUNTY	STEWART COUNTY.
TROUSDALE COUNTY	TROUSDALE COUNTY.
VAN BUREN COUNTY	VAN BUREN COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
WAYNE COUNTY	WAYNE COUNTY.
WEAKLEY COUNTY	WEAKLEY COUNTY.
WHITE COUNTY	WHITE COUNTY.
TEXAS:	
BAYTOWN CITY	BAYTOWN CITY IN HARRIS COUNTY.
BEAUMONT CITY	BEAUMONT CITY IN JEFFERSON COUNTY.
BALANCE OF BRAZORIA COUNTY	BRAZORIA COUNTY LESS LAKE JACKSON CITY; PEARLAND CITY.
BROOKS COUNTY	BROOKS COUNTY.
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY.
CALDWELL COUNTY	CALDWELL COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
BALANCE OF CAMERON COUNTY	CAMERON COUNTY LESS BROWNSVILLE CITY; HARLINGEN CITY.
CASS COUNTY	CASS COUNTY.
CLEBURNE CITY	CLEBURNE CITY IN JOHNSON COUNTY.
COCHRAN COUNTY	COCHRAN COUNTY.
COLEMAN COUNTY	COLEMAN COUNTY.
CORSICANA CITY	CORSICANA CITY IN NAVARRO COUNTY.
CULBERSON COUNTY	CULBERSON COUNTY.
DALLAS CITY	DALLAS CITY IN COLLIN COUNTY; DALLAS COUNTY; DENTON COUNTY.
DEL RIO CITY	DEL RIO CITY IN VAL VERDE COUNTY.
DIMMIT COUNTY	DIMMIT COUNTY.
DUVAL COUNTY	DUVAL COUNTY.
EAGLE PASS CITY	EAGLE PASS CITY IN MAVERICK COUNTY.
EDINBURG CITY	EDINBURG CITY IN HIDALGO COUNTY.
EL PASO CITY	EL PASO CITY IN EL PASO COUNTY.
BALANCE OF EL PASO COUNTY	EL PASO COUNTY LESS EL PASO CITY; SOCORRO CITY.
FANNIN COUNTY	FANNIN COUNTY.
FLOYD COUNTY	FLOYD COUNTY.
FRIO COUNTY	FRIO COUNTY.
FRISCO CITY	FRISCO CITY IN COLLIN COUNTY; DENTON COUNTY.
FT WORTH CITY	FT WORTH CITY IN TARRANT COUNTY.
GALVESTON CITY	GALVESTON CITY IN GALVESTON COUNTY.
BALANCE OF GALVESTON COUNTY	GALVESTON COUNTY LESS FRIENDSWOOD CITY; GALVESTON CITY; LEAGUE CITY; TEXAS CITY.
GRAND PRAIRIE CITY	GRAND PRAIRIE CITY IN DALLAS COUNTY; TARRANT COUNTY.
GRIMES COUNTY	GRIMES COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HARLINGEN CITY	HARLINGEN CITY IN CAMERON COUNTY.
BALANCE OF HIDALGO COUNTY	HIDALGO COUNTY LESS EDINBURG CITY; MC ALLEN CITY; MISSION CITY; PHARR CITY; SAN JUAN CITY; WESLACO CITY.
HOUSTON CITY	HOUSTON CITY IN FORT BEND COUNTY; HARRIS COUNTY.
HUDSPETH COUNTY	HUDSPETH COUNTY.
HUTCHINSON COUNTY	HUTCHINSON COUNTY.
JASPER COUNTY	JASPER COUNTY.
JIM WELLS COUNTY	JIM WELLS COUNTY.
KAUFMAN COUNTY	KAUFMAN COUNTY.
KILLEEN CITY	KILLEEN CITY IN BELL COUNTY.
KINNEY COUNTY	KINNEY COUNTY.
LAREDO CITY	LAREDO CITY IN WEBB COUNTY.
LIBERTY COUNTY	LIBERTY COUNTY.
LONGVIEW CITY	LONGVIEW CITY IN GREGG COUNTY, HARRISON COUNTY.
LOVING COUNTY	LOVING COUNTY.
MARION COUNTY	MARION COUNTY.
MATAGORDA COUNTY	MATAGORDA COUNTY.
BALANCE OF MAVERICK COUNTY	MAVERICK COUNTY LESS EAGLE PASS CITY.
MC ALLEN CITY	MC ALLEN CITY IN HIDALGO COUNTY.
MC KINNEY CITY	MC KINNEY CITY IN COLLIN COUNTY.
MISSION CITY	MISSION CITY IN HIDALGO COUNTY.
MORRIS COUNTY	MORRIS COUNTY.
NEWTON COUNTY	NEWTON COUNTY.
ORANGE COUNTY	ORANGE COUNTY.
PANOLA COUNTY	PANOLA COUNTY.
PARIS CITY	PARIS CITY IN LAMAR COUNTY.
PHARR CITY	PHARR CITY IN HIDALGO COUNTY.
PORT ARTHUR CITY	PORT ARTHUR CITY IN JEFFERSON COUNTY.
PRESIDIO COUNTY	PRESIDIO COUNTY.
RED RIVER COUNTY	RED RIVER COUNTY.
REEVES COUNTY	REEVES COUNTY.
SABINE COUNTY	SABINE COUNTY.
SAN JUAN CITY	SAN JUAN CITY IN HIDALGO COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
SAN MARCOS CITY	SAN MARCOS CITY IN HAYS COUNTY.
SHELBY COUNTY	SHELBY COUNTY.
SHERMAN CITY	SHERMAN CITY IN GRAYSON COUNTY.
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY.
SOMERVELL COUNTY	SOMERVELL COUNTY.
STARR COUNTY	STARR COUNTY.
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY.
TYLER COUNTY	TYLER COUNTY.
UVALDE COUNTY	UVALDE COUNTY.
WARD COUNTY	WARD COUNTY.
BALANCE OF WEBB COUNTY	WEBB COUNTY LESS LAREDO CITY.
WESLACO CITY	WESLACO CITY IN HIDALGO COUNTY.
WILLACY COUNTY	WILLACY COUNTY.
WINKLER COUNTY	WINKLER COUNTY.
ZAPATA COUNTY	ZAPATA COUNTY.
ZAVALA COUNTY	ZAVALA COUNTY.
UTAH:	
CARBON COUNTY	CARBON COUNTY.
CLEARFIELD CITY	CLEARFIELD CITY IN DAVIS COUNTY.
DUCHESNE COUNTY	DUCHESNE COUNTY.
EMERY COUNTY	EMERY COUNTY.
GARFIELD COUNTY	GARFIELD COUNTY.
GRAND COUNTY	GRAND COUNTY.
JUAB COUNTY	JUAB COUNTY.
MIDVALE CITY	MIDVALE CITY IN SALT LAKE COUNTY.
OGDEN CITY	OGDEN CITY IN WEBER COUNTY.
SAN JUAN COUNTY	SAN JUAN COUNTY.
SANPETE COUNTY	SANPETE COUNTY.
SUMMIT COUNTY	SUMMIT COUNTY.
TOOELE CITY	TOOELE CITY IN TOOELE COUNTY.
WASATCH COUNTY	WASATCH COUNTY.
WEST VALLEY CITY	WEST VALLEY CITY IN SALT LAKE COUNTY.
VERMONT:	
ESSEX COUNTY	ESSEX COUNTY.
KILLINGTON TOWN	KILLINGTON TOWN IN RUTLAND COUNTY.
ORLEANS COUNTY	ORLEANS COUNTY.
VIRGINIA:	
APPOMATTOX COUNTY	APPOMATTOX COUNTY.
BUCHANAN COUNTY	BUCHANAN COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
DANVILLE CITY	DANVILLE CITY.
DICKENSON COUNTY	DICKENSON COUNTY.
GALAX CITY	GALAX CITY.
GRAYSON COUNTY	GRAYSON COUNTY.
HALIFAX COUNTY	HALIFAX COUNTY.
HENRY COUNTY	HENRY COUNTY.
MARTINSVILLE CITY	MARTINSVILLE CITY.
MECKLENBURG COUNTY	MECKLENBURG COUNTY.
PAGE COUNTY	PAGE COUNTY.
PATRICK COUNTY	PATRICK COUNTY.
PETERSBURG CITY	PETERSBURG CITY.
PITTSYLVANIA COUNTY	PITTSYLVANIA COUNTY.
PULASKI COUNTY	PULASKI COUNTY.
SMYTH COUNTY	SMYTH COUNTY.
WILLIAMSBURG CITY	WILLIAMSBURG CITY.
WASHINGTON:	
ADAMS COUNTY	ADAMS COUNTY.
AUBURN CITY	AUBURN CITY IN KING COUNTY.
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY.
BURIEN CITY	BURIEN CITY IN KING COUNTY.
BALANCE OF CHELAN COUNTY	CHELAN COUNTY LESS WENATCHEE CITY.
CLALLAM COUNTY	CLALLAM COUNTY.
BALANCE OF CLARK COUNTY	CLARK COUNTY LESS VANCOUVER CITY.
COLUMBIA COUNTY	COLUMBIA COUNTY.
BALANCE OF COWLITZ COUNTY	COWLITZ COUNTY LESS LONGVIEW CITY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
EVERETT CITY	EVERETT CITY IN SNOHOMISH COUNTY.
FERRY COUNTY	FERRY COUNTY.
GRANT COUNTY	GRANT COUNTY.
GRAYS HARBOR COUNTY	GRAYS HARBOR COUNTY.
KENNEWICK CITY	KENNEWICK CITY IN BENTON COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
KLICKITAT COUNTY	KLICKITAT COUNTY.
LAKEWOOD CITY	LAKEWOOD CITY IN PIERCE COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LONGVIEW CITY	LONGVIEW CITY IN COWLITZ COUNTY.
LYNNWOOD CITY	LYNNWOOD CITY IN SNOHOMISH COUNTY.
MASON COUNTY	MASON COUNTY.
MOUNT VERNON CITY	MOUNT VERNON CITY IN SKAGIT COUNTY.
OKANOGAN COUNTY	OKANOGAN COUNTY.
PACIFIC COUNTY	PACIFIC COUNTY.
PASCO CITY	PASCO CITY IN FRANKLIN COUNTY.
PEND OREILLE COUNTY	PEND OREILLE COUNTY.
RENTON CITY	RENTON CITY IN KING COUNTY.
SEATTLE CITY	SEATTLE CITY IN KING COUNTY.
BALANCE OF SKAGIT COUNTY	SKAGIT COUNTY LESS MOUNT VERNON CITY.
SKAMANIA COUNTY	SKAMANIA COUNTY.
BALANCE OF SNOHOMISH COUNTY	SNOHOMISH COUNTY LESS BOTHELL CITY, EDMONDS CITY, EVERETT CITY, LYNNWOOD CITY, MARYSVILLE CITY.
SPOKANE CITY	SPOKANE CITY IN SPOKANE COUNTY.
STEVENS COUNTY	STEVENS COUNTY.
TACOMA CITY	TACOMA CITY IN PIERCE COUNTY.
VANCOUVER CITY	VANCOUVER CITY IN CLARK COUNTY.
WAHKIAKUM COUNTY	WAHKIAKUM COUNTY.
WALLA WALLA CITY	WALLA WALLA CITY IN WALLA WALLA COUNTY.
WENATCHEE CITY	WENATCHEE CITY IN CHELAN COUNTY.
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY.
BALANCE OF YAKIMA COUNTY	YAKIMA COUNTY LESS YAKIMA CITY.
WEST VIRGINIA:	
BARBOUR COUNTY	BARBOUR COUNTY.
BOONE COUNTY	BOONE COUNTY.
BRAXTON COUNTY	BRAXTON COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CLAY COUNTY	CLAY COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
GILMER COUNTY	GILMER COUNTY.
GRANT COUNTY	GRANT COUNTY.
GREENBRIER COUNTY	GREENBRIER COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LOGAN COUNTY	LOGAN COUNTY.
MASON COUNTY	MASON COUNTY.
MC DOWELL COUNTY	MC DOWELL COUNTY.
MINERAL COUNTY	MINERAL COUNTY.
MINGO COUNTY	MINGO COUNTY.
NICHOLAS COUNTY	NICHOLAS COUNTY.
PARKERSBURG CITY	PARKERSBURG CITY IN WOOD COUNTY.
PLEASANTS COUNTY	PLEASANTS COUNTY.
POCAHONTAS COUNTY	POCAHONTAS COUNTY.
RITCHIE COUNTY	RITCHIE COUNTY.
ROANE COUNTY	ROANE COUNTY.
SUMMERS COUNTY	SUMMERS COUNTY.
TUCKER COUNTY	TUCKER COUNTY.
UPSHUR COUNTY	UPSHUR COUNTY.
WEBSTER COUNTY	WEBSTER COUNTY.
WETZEL COUNTY	WETZEL COUNTY.
WIRT COUNTY	WIRT COUNTY.
WYOMING COUNTY	WYOMING COUNTY.
WISCONSIN:	
ASHLAND COUNTY	ASHLAND COUNTY.
BAYFIELD COUNTY	BAYFIELD COUNTY.
BELOIT CITY	BELOIT CITY IN ROCK COUNTY.
CLARK COUNTY	CLARK COUNTY.
FLORENCE COUNTY	FLORENCE COUNTY.
FOREST COUNTY	FOREST COUNTY.
GREEN BAY CITY	GREEN BAY CITY IN BROWN COUNTY.
IRON COUNTY	IRON COUNTY.
JUNEAU COUNTY	JUNEAU COUNTY.
KENOSHA CITY	KENOSHA CITY IN KENOSHA COUNTY.
LANGLADE COUNTY	LANGLADE COUNTY.
MANITOWOC CITY	MANITOWOC CITY IN MANITOWOC COUNTY.
MARINETTE COUNTY	MARINETTE COUNTY.

LABOR SURPLUS AREAS—Continued

[October 1, 2004 Through September 30, 2005]

Eligible labor surplus areas	Civil jurisdictions included
MARQUETTE COUNTY	MARQUETTE COUNTY.
MENOMINEE COUNTY	MENOMINEE COUNTY.
MILWAUKEE CITY	MILWAUKEE CITY IN MILWAUKEE COUNTY.
OCONTO COUNTY	OCONTO COUNTY.
POLK COUNTY	POLK COUNTY.
RACINE CITY	RACINE CITY IN RACINE COUNTY.
RUSK COUNTY	RUSK COUNTY.
WASHBURN COUNTY	WASHBURN COUNTY.
WEST BEND CITY	WEST BEND CITY IN WASHINGTON COUNTY.

[FR Doc. 04–24138 Filed 10–27–04; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Thursday,
October 28, 2004

Part V

The President

Presidential Determination No. 2005–04 of October 20, 2004—Presidential Determination on Use of Cooperative Threat Reduction Funds in Albania Under Section 1308 of the National Defense Authorization Act for Fiscal Year 2004

Memorandum of October 21, 2004—Delegation of Certain Functions Related to the Sudan Peace Act

Federal Register
Vol. 69, No. 208
Thursday, October 28, 2004

Presidential Documents

Title 3—

The President

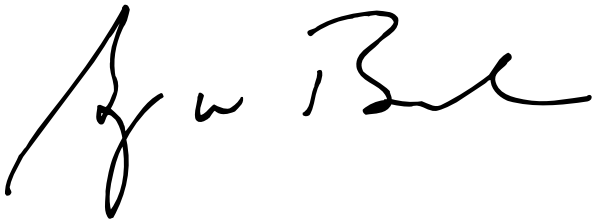
Presidential Determination No. 2005–04 of October 20, 2004

Presidential Determination on Use of Cooperative Threat Reduction Funds in Albania under Section 1308 of the National Defense Authorization Act for Fiscal Year 2004

Memorandum for the Secratary of State

Pursuant to the authority vested in me by section 1308 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) (the ''Act''), I hereby determine that the obligation and expenditure of Cooperative Threat Reduction (CTR) funds for the destruction of chemical warfare agents stockpiled in Albania, will permit the United States to take advantage of an opportunity to achieve long-standing nonproliferation goals. I also determine that this project to destroy the chemical warfare agents stockpiled in Albania will be completed within a short period of time and that the Department of Defense is the entity of the Federal Government that is most capable of carrying out this project.

You are authorized and directed to transmit this determination, along with the justification and project description required by section 1308(d)(2) of the Act, to the Congress no later than 10 days after the obligation of funds for this project and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 20, 2004.

[FR Doc. 04–24301
Filed 10–27–04; 9:31 am]
Billing code 4710–10–P

Presidential Documents

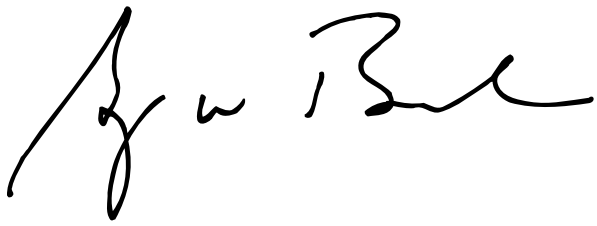
Memorandum of October 21, 2004

Delegation of Certain Functions Related to the Sudan Peace Act

Memorandum for the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the determination, certification, and reporting functions conferred upon the President by sections 6(b)(1) and 6(c) of the Sudan Peace Act (Public Law 107–245).

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 21, 2004.

[FR Doc. 04–24302
Filed 10–27–04; 9:31 am]
Billing code 4710–10–P

Reader Aids

Federal Register

Vol. 69, No. 208

Thursday, October 28, 2004

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Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

58799–59118 1
59119–59540 4
59541–59758 5
59759–60076 6
60077–60282 7
60283–60536 8
60537–60794 12
60795–60942 13
60943–61142 14
61143–61300 15
61301–61438 18
61439–61576 19
61577–61734 20
61735–61990 21
61991–62174 22
62175–62392 25
62393–62552 26
62553–62802 27
62803–63040 28

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7822 59539
7823 59759
7824 60275
7825 60277
7826 60279
7827 60789
7828 60793
7829 61135
7830 61137
7831 61141
7832 61727
7833 61729
7834 61989
7835 62387
7836 62389
7837 62801

Executive Orders:
13173 (Amended by 13359)
13359 62391
13359 62391
13360 62549

Administrative Orders:
Memorandums:
Memorandum of October 21, 2004 63039
Presidential Determinations:
No. 2004-53 of September 30, 2004 60943
No. 2004-54 of September 30, 2004 60945
No. 2005-01 of October 7, 2004 62793
No. 2005-02 of October 14, 2004 62795
No. 2005-03 of October 16, 2004 62797
No. 2005–04 of October 20, 2004 63037
Notices:
Notice of October 19, 2004 61733

5 CFR

591 59761
730 61143
1201 61991

Proposed Rules:
550 60097

7 CFR

6 59763
60 59708
301 .....59119, 60537
319 .....61577, 61735
322 61735
457 62803
611 60283
906 62175
922 62177
923 62177
930 61589
985 61755
987 60947
1206 59120
1730 60537
1776 59764
1783 59770
3402 62536

Proposed Rules:
304 60567
319 62823
360 62419
457 60320
923 59551
932 62829
1032 61323
1280 61159
1755 61609
1776 59836
1783 59836
4280 59650

8 CFR

214 60939

9 CFR

52 60542
317 58799
381 58799

10 CFR

2 62393
50 58804
72 61592
73 58820
431 .....61916, 61949, 61962, 61974

Proposed Rules:
35 62831
110 60567

11 CFR

104 59775
110 59775

12 CFR

204 60543
210 62553
308 61301
335 59780
701 62561
723 62563
747 60077

Proposed Rules:
615 62226

14 CFR

13 59490

23 58822
25 ....60795, 60797, 61991, 62394, 62778
39 ....58824, 58826, 58828, 59541, 59788, 59790, 60081, 60799, 60801, 60802, 60804, 60807, 60809, 60949, 60952, 60954, 61144, 61305, 61758, 61993, 62179, 62396, 62399, 62400, 62566, 62567, 62570, 62571, 62803, 62805, 62807
61 62809
71 ....59129, 59303, 60284, 60285, 60286, 60956, 61439, 61760, 62401, 62402, 62403, 62404
91 ....59752, 60534
95 61997
97 ....61146, 61592
121 62778
150 61438

Proposed Rules:

39 ....59147, 59148, 59151, 59153, 59557, 59559, 59837, 60098, 60100, 60104, 60106, 60568, 60971, 61611, 62003, 62005, 62421, 62424, 62623, 62625, 62627, 62629
71 ....58859, 59756, 62832
73 58860
93 61708
95 61128
97 59756
201 62833
203 62833
205 62833
215 62833
298 62833
380 62833
385 62833
389 62833

15 CFR

730 60545
734 60545
744 59303
746 60545
770 60545
772 60545
774 60545

Proposed Rules:

732 60829
736 60829
740 60829
744 60829
752 60829
764 60829
772 60829
904 60569
995 61165
996 61172

16 CFR

305 62180

Proposed Rules:

642 58861
698 58861

17 CFR

1 59544
211 59130
232 60287
240 60287
249 60287

Proposed Rules:

171 62226
228 ....59094, 62426
229 ....59094, 62426
232 ....59094, 62426
240 ....59094, 62426
249 ....59094, 62426
270 ....59094, 62426

18 CFR

Proposed Rules:

35 61180

19 CFR

191 60082

Proposed Rules:

133 ....59562, 60936

20 CFR

404 ....60224, 61594
408 60224
416 ....60224, 61594

21 CFR

14 62810
74 60307
350 61148
510 ....60811, 62406, 62810
520 ....59131, 60547, 62180, 62406, 62810
522 ....60308, 62406
524 62181
529 ....61761, 61999
556 60308
558 ....60547, 62406
888 59132

Proposed Rules:

16 60108
118 60108
361 59569

22 CFR

51 ....60811, 61597
202 61716
205 61716
211 61716
226 61716

23 CFR

Proposed Rules:

655 62007
658 62426

24 CFR

7 62172
954 62164
1003 62164

25 CFR

170 60957

26 CFR

1 ....60222, 61309, 61761, 62181
602 ....61309, 62181

Proposed Rules:

1 ....58873, 62631
25 ....62228, 62631
48 59572
301 62229

28 CFR

Proposed Rules:

16 61323

29 CFR

4022 61150
4044 61150

Proposed Rules:

1910 59306
1915 59306
1917 59306
1918 59306
1926 59306
2700 62632
2701 62632
2702 62632
2704 62632

30 CFR

914 58830

Proposed Rules:

906 58873

31 CFR

240 61564

Proposed Rules:

344 62229

32 CFR

199 60547
322 62407
706 ....61311, 61312, 61313, 61314, 61316, 61597

33 CFR

100 ....59793, 59795, 59797, 61440, 61442, 62574
117 ....59135, 59136, 60555
151 60309
165 ....58833, 58834, 59136, 59799, 59801, 59803, 59806, 59808, 62408, 62574

Proposed Rules:

110 60592
117 ....60595, 60597, 61445, 61770
165 ....60600, 62427

34 CFR

Proposed Rules:

75 61556
76 61556
108 61556
225 62008

36 CFR

242 60957

Proposed Rules:

1270 58875

37 CFR

2 59809
202 62411
270 59648

Proposed Rules:

252 61325
257 61325
259 61325

38 CFR

1 ....60083, 62188
2 62188
3 60083
17 62204
21 ....62205, 62206, 62209

Proposed Rules:

3 62229
5 ....59072, 61915
20 62229

39 CFR

20 59545
111 ....59139, 59545, 62578
501 ....60090, 61085

Proposed Rules:

111 62635

40 CFR

35 59810
52 ....59546, 59812, 60962, 61762, 61766, 62210, 62583, 62585, 62588, 62589, 62591
60 61762
63 ....58837, 60813
81 ....61766, 62210, 62591
180 ....60820, 61599, 62596, 62602
261 60557
262 62217
271 ....59139, 60091, 60964
300 58839

Proposed Rules:

9 60320
23 60320
52 ....59572, 59839, 60328, 60974, 62636, 62637
63 60837
81 ....60328, 62637
271 60975
81 60328
163 60320
177 60320
178 60320
179 60320
180 ....59843, 60320
261 59156
262 62237
271 ....59165, 60110, 60975

42 CFR

71 59144
403 60242
412 60242
413 60242
418 60242
460 60242
480 60242
482 60242
483 60242
484 62124
485 60242
489 60242

43 CFR

Proposed Rules:

10 61613

44 CFR

64 ....60309, 61444
67 61445

Proposed Rules:

67 ....61457, 61460, 62013

45 CFR

303 62413
2251 60094
2252 60094
2253 60094

Proposed Rules:

Ch. XXV 60603

46 CFR

232 61448
281 61448
287 61448
295 61448
298 61448

310 .....61448, 61452, 61605
355.....61448
380.....61448
390.....61448

47 CFR

0.....59145
1 .....58840, 59145, 61317
15.....59500, 62615
27.....59500
43.....62225
54.....59145, 61999
64 .....60311, 61152, 62225, 62811, 62816
73 .....58840, 59500, 60316, 60560, 60561, 62225, 62817
74.....62615
78.....62615
90.....59500, 60561
101.....59145, 62615

Proposed Rules:

0.....59166
2.....59166
54.....61334
64.....61184
73 .....60344, 60346, 60604, 60605, 61615, 61616, 61617
76.....61193
101.....59166

48 CFR

Ch. 1.....59698, 59699, 60967
1.....59699
5.....59700
7.....59701
11.....59701
12.....59700
13 .....59699, 59700, 59701
14.....59700, 59703
15.....59701
17.....59700
19.....59699, 59700
22.....59700
25.....59700
33.....59700
36.....59699
39.....59702
52 .....59700, 59703, 60967
53.....59699
1852.....60967
1853.....60967
1872.....60967

Proposed Rules:

1511.....59843
1552.....59843
2101.....59166
2102.....59166
2103.....59166
2104.....59166
2105.....59166
2109.....59166
2110.....59166
2115.....59166
2116.....59166
2131.....59166
2132.....59166
2137.....59166
2144.....59166
2146.....59166
2149.....59166
2152.....59166

49 CFR

1.....60562
171.....58841
173.....58841
221.....62817
235.....62817
571 .....58843, 59146, 60316, 60563, 60968, 61154, 61322
1002.....58855

Proposed Rules:

192.....61771
195.....61771
386.....61617

50 CFR

17 .....59996, 62415, 62944
100.....60957
222.....61155
223.....61155
300.....59303
622.....62000, 62818
648 .....59550, 59815, 60565, 62001, 62818
660 .....59816, 61157, 61768
679 .....59834, 59835, 60566, 60828, 60970, 61607

Proposed Rules:

17 .....58876, 59844, 59859, 60110, 60134, 60138, 60605, 60706, 61461, 61774, 62238
648.....62844

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 28, 2004

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in—
California; published 9-28-04

Cherries (tart) grown in—
Michigan et al.; published 9-28-04

Raisins produced from grapes grown in—
California; published 9-28-04

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
Apples
Correction; published 10-28-04

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific coast groundfish; published 9-28-04
Pacific Coast groundfish; correction; published 10-15-04

FEDERAL COMMUNICATIONS COMMISSION

Radio services; special:
Extend interference protection to marine and aeronautical distress and safety frequency 406.025 MHz; published 9-28-04

FEDERAL RESERVE SYSTEM

Availability of funds and collection of checks (Regulation CC):
Substitute checks; indorsement, reconverting bank identification, and truncating bank identification requirements; published 8-4-04

Collection of checks and other items by Federal Reserve Banks and funds transfers through Fedwire (Regulation J):
Check Clearing for the 21st Century Act—
Check processing service options; collection of substitute checks and items converted to electronic form; published 10-27-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
Sponsor name and address changes—
Ridley U.S. Holdings, Inc.; published 10-28-04

Organization, functions, and authority delegations:
Biological Response Modifiers Advisory Committee; name change to Cellular, Tissue and Gene Therapies Advisory Committee and function change; published 10-28-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:
St. Johns River, Jacksonville, FL; safety zone; published 10-6-04

JUSTICE DEPARTMENT

Executive Office for Immigration Review:
Aliens with criminal convictions before April 1, 1997; relief from deportation or removal; published 9-28-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; published 8-5-04
Correction; published 9-15-04

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad safety:
Laws and regulations violation; civil monetary penalties; inflation adjustment
Correction; published 10-28-04

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Civil monetary penalties; inflation adjustment; published 9-28-04

Motor vehicle safety standards:
Defect and noncompliance—
Early warning and customer satisfaction campaign documentation; reporting requirements; published 9-28-04

TREASURY DEPARTMENT

Fiscal Service

Checks drawn on U.S. Treasury; indorsement and payment; published 10-19-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (sweet) grown in—
Washington; comments due by 11-4-04; published 10-5-04 [FR 04-22303]

Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Lamb promotion, research, and information; referendum; comments due by 11-4-04; published 10-15-04 [FR 04-23110]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
Birds, rats, and mice; regulations and standards; comments due by 11-1-04; published 7-21-04 [FR 04-16541]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Special programs:
Farm Security and Rural Investment Act of 2002; implementation—
Renewable Energy Systems and Energy Efficiency Improvements, Grant, Guaranteed Loan, and Direct Loan Program; comments due by 11-4-04; published 10-5-04 [FR 04-22093]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants:
Household Water Well System Program; comments due by 11-5-04; published 10-6-04 [FR 04-22447]
Revolving Fund Program; revolving funds for financing water and wastewater projects; comments due by 11-5-04; published 10-6-04 [FR 04-22445]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands king and tanner crab; comments due by 11-1-04; published 9-1-04 [FR 04-19971]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 11-1-04; published 10-6-04 [FR 04-22477]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
Ownership by contractor; patent rights; comments due by 11-1-04; published 9-30-04 [FR 04-21853]

Federal Acquisition Regulation (FAR):
SDB and HUBZone price evaluation factor; applicability; comments due by 11-1-04; published 9-2-04 [FR 04-20003]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]
Practice and procedure:
Regional transmission organizations and independent system operators; financial reporting, cost accounting, oversight, and recovery practices; comments due by 11-4-04; published 9-29-04 [FR 04-21760]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 11-1-04; published 9-30-04 [FR 04-21824]
Colorado; comments due by 11-1-04; published 9-30-04 [FR 04-21926]
New York; comments due by 11-5-04; published 10-6-04 [FR 04-22484]
Virginia; comments due by 11-5-04; published 10-6-04 [FR 04-22359]
Wisconsin; comments due by 11-4-04; published 10-5-04 [FR 04-22250]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Hazardous waste program authorizations:
Nebraska; comments due by 11-3-04; published 10-4-04 [FR 04-22252]
Pesticide programs:
Pesticides use under emergency conditions; emergency exemption process; revisions; comments due by 11-2-04; published 9-3-04 [FR 04-20038]
Solid wastes:
Hazardous waste identification and listing—
Exclusions; comments due by 11-3-04; published 10-4-04 [FR 04-22235]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FARM CREDIT ADMINISTRATION
Farm credit system:
Administrative expenses; loan policies and operations, funding and fiscal affairs; disclosure to shareholders; capital adequacy risk-weighting—
Capital standards and requirements; comments due by 11-4-04; published 8-6-04 [FR 04-17570]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services; comments due by 11-1-04; published 9-1-04 [FR 04-19955]
Common carriers:
Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services
Correction; comments due by 11-1-04; published 9-17-04 [FR 04-21006]
Television broadcasting:
Cable Television Consumer Protection Act—
Cable television inside wiring rules; comments due by 11-5-04; published 10-15-04 [FR 04-23186]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
SDB and HUBZone price evaluation factor; applicability; comments due by 11-1-04; published 9-2-04 [FR 04-20003]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Nasal decongestant drug products (OTC); final monograph amendment; comments due by 11-1-04; published 8-2-04 [FR 04-17445]
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
Enforcement procedures to prevent the importation of piratical articles; copyrights recordation; comments due by 11-4-04; published 10-5-04 [FR 04-22334]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
New Jersey; comments due by 11-5-04; published 8-10-04 [FR 04-18204]

HOMELAND SECURITY DEPARTMENT
United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT):
Biometric data collection from additional travelers; expansion to 50 most highly trafficked land border ports of entry; comments due by 11-1-04; published 8-31-04 [FR 04-19906]
Correction; comments due by 11-1-04; published 9-2-04 [FR 04-20126]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Findings on petitions, etc.—
Lost River sucker and shortnose sucker; 5-year status review; comments due by 10-31-04; published 7-21-04 [FR 04-16549]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Over-the-counter (OTC) medications; inmate access
Correction; comments due by 11-2-04; published 9-3-04 [FR 04-20097]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
SDB and HUBZone price evaluation factor; applicability; comments due by 11-1-04; published 9-2-04 [FR 04-20003]

NUCLEAR REGULATORY COMMISSION
Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SECURITIES AND EXCHANGE COMMISSION
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
eXtensible Business Reporting Language Voluntary Financial Reporting Program; financial information data tagging; comments due by 11-1-04; published 10-1-04 [FR 04-22034]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airspace designations; incorporation by reference; comments due by 11-4-04; published 10-5-04 [FR 04-22376]
Airworthiness directives:
Airbus; comments due by 11-1-04; published 10-5-04 [FR 04-22356]

Boeing; comments due by 11-5-04; published 9-21-04 [FR 04-21176]
Bombardier; comments due by 11-1-04; published 9-2-04 [FR 04-20014]
Gulfstream Aerospace; comments due by 11-3-04; published 10-4-04 [FR 04-22193]
Hoffmann Propeller GmbH & Co KG; comments due by 11-1-04; published 9-2-04 [FR 04-19829]
McDonnell Douglas; comments due by 11-2-04; published 9-3-04 [FR 04-20015]
McDonnell Douglas; correction; comments due by 11-2-04; published 9-21-04 [FR C4-20015]
Raytheon; comments due by 11-2-04; published 9-14-04 [FR 04-20688]
Airworthiness standards:
Special conditions—
Raytheon Model King Air 200, 300, and B300 airplanes; comments due by 11-1-04; published 10-1-04 [FR 04-22019]
Class D and E airspace; comments due by 11-1-04; published 9-24-04 [FR 04-21529]
Class E airspace; comments due by 11-1-04; published 9-24-04 [FR 04-21530]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Power-operated window, partition, and roof panel systems; comments due by 11-1-04; published 9-15-04 [FR 04-20714]

TREASURY DEPARTMENT
Fiscal Service
Treasury certificates of indebtedness, notes, and bonds; State and local government series securities; comments due by 11-1-04; published 9-30-04 [FR 04-21909]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Controlled foreign corporations' subpart F income; U.S. shareholder's pro rata share; determination guidance; comments due by 11-4-04; published 8-6-04 [FR 04-17907]
Labor and personal services; source of compensation; comments due by 11-4-04; published 8-6-04 [FR 04-17813]
Qualified dividend income; time and manner of making election to treat as investment income; cross reference; comments due by 11-3-04; published 8-5-04 [FR 04-17797]
Section 179 elections; cost of property expense; comments due by 11-2-04; published 8-4-04 [FR 04-17540]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
First Merchant Bank OSH Ltd., et al.; special measures imposition due to designation as institution of primary money laundering concern; comments due by 11-1-04; published 9-30-04 [FR 04-21879]
Infobank; special measures imposition due to designation as institution of primary money laundering concern; comments due by 11-1-04; published 9-30-04 [FR 04-21878]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4520/P.L. 108–357

American Jobs Creation Act of 2004 (Oct. 22, 2004; 118 Stat. 1418)

S. 2195/P.L. 108–358

Anabolic Steroid Control Act of 2004 (Oct. 22, 2004; 118 Stat. 1661)

Last List October 25, 2004

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